E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
3/17/2025 4:46 PM

In the

Appellate Court of Maryland

No. ACM-REG-1325-2024

September Term, 2024

JUSTIN KYLE HOLDER

Appellant,

v.

WASHINGTON COUNTY BOARD OF COUNTY COMMISSIONERS, ET AL.,

Appellees.

Appeal from the Circuit Court for Washington County, Maryland
(Hon. Judge Richard E. Jordan)

RECORD EXTRACT – VOLUME 4

Jacob I. Weddle, Esq.
CPF NO. 0712120390
REMUS, WEDDLE & CAVENEE, LLC
18 WEST CHURCH STREET, SECOND FLOOR
FREDERICK, MARYLAND 21701
(301) 206-5770
jweddle@rwclawyers.com
Counsel for Plaintiff/Appellant

Record Extract
ACM-REG-1325-2024
Sept. Term 2024; No. 1325

Table of Contents

VOLUME 1 - Day 1 Trial Transcript

A. TESTIMONY OF JOSHUA O'NEAL

1. Direct examination – Mr. Weddle. (E0031)
2. Cross examination – Mr. Karpinski. (E0072)
3. Redirect examination – Mr. Weddle. (E0078)

B. TESTIMONY OF BARRY LEVEY

1. Direct examination – Mr. Weddle. (E0083)
2. Cross examination – Mr. Karpinski. (E0113)
3. Redirect examination – Mr. Weddle. (E0116)

C. TESTIMONY OF HONORABLE JOSEPH MICHAEL

1. Direct examination – Mr. Karpinski. (E0119)
2. Cross examination – Mr. Weddle. (E0145)

D. TESTIMONY OF ADAM GREIVELL

1. Direct examination – Mr. Weddle. (E0176)
2. Cross examination – Mr. Karpinski. (E0217)
3. Redirect examination – Mr. Weddle. (E0226)

VOLUME 2 - Day 2 Trial Transcript

A. TESTIMONY OF HONORABLE JOSEPH MICHAEL CONTINUED

1. Cross examination – Mr. Weddle. (E0256)
2. Redirect examination – Mr. Karpinski. (E0296)
3. Recross examination – Mr. Weddle. (E0298)

B. TESTIMONY OF ANDREW BRIGHT

1. Direct examination – Mr. Weddle. (E0307)
2. Cross examination – Mr. Karpinski. (E0378)
3. Redirect examination – Mr. Weddle. (E0405)
4. Recross examination – Mr. Karpinski. (E0417)
5. Redirect examination – Mr. Weddle. (E0422)

C. TESTIMONY OF JUSTIN HOLDER

1. Direct examination – Mr. Weddle. (E0426)

VOLUME 3 - Day 3 Trial Transcript

A. TESTIMONY OF JOSHUA O'NEAL

1. Direct examination – Mr. Weddle. (E0471)
2. Cross examination – Mr. Karpinski. (E0473)

B. TESTIMONY OF JUSTIN HOLDER CONTINUED

1. Direct examination – Mr. Weddle. (E0477)
2. Cross examination – Mr. Karpinski. (E0550)
3. Redirect examination - Mr. Weddle. (E0614)
4. Recross examination - Mr. Karpinski. (E0634)

VOLUME 4 - Day 4 Trial Transcript

A. TESTIMONY OF ANDREW BRIGHT

1. Direct examination – Mr. Karpinski. (E0661)

VOLUME 5 - TRIAL EXHIBITS

A. **Volume 5A**

1. Petitioner Trial Exhibits 1-6. (E0763)

B. **Volume 5B**

1. Petitioner Trial Exhibits 7-25. (E0778)

C. **Volume 5C**

1. Petitioner Trial Exhibits 26-45. (E0893)

D. **Volume 5D**

1. Petitioner Trial Exhibits 46-50. (E0988)

E. **Volume 5E**

1. Petitioner Trial Exhibit 51. (E1082)
2. Respondent Trial Exhibits 1-12. (E1083)

VOLUME 6 - PLEADINGS, AFFIDAVITS, AND ORDERS

A. Complaint. (E1179)

B. Answer. (E1190)

C. Amended Complaint. (E1197)

D. Amended Answer. (E1223)

E. Interlocutory Order(s) of the Trial Court

1. Respondents' Protective Order Granted (E1239)
2. Petitioner's Strike Affidavit Granted (E1240)
3. Respondents' Mot to Dismiss Denied (E1241)
4. Respondents' Mot to Extend Granted (E1242)
5. Respondents' Mot to Alter Denied (E1243)
6. Respondents' Mot to Dismiss Denied (E1245)
7. Petitioner's Mot to Compel Denied (E1246)
8. Respondents' Mot to Quash Depo Granted (E1247)

F. Final Order and Oral Opinion. (E1248)

G. Petitioner's Mot to Amend denied. (E1261)

H. Affidavit of Andrew Bright. (E1262)

I. Affidavits of Justin Holder. (E1266)

J. Notice of Appeal Filed. (E1273)

K. Docket Entries. (E1275)

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN KYLE HOLDER *

Petitioner *

v. * Case No. C-21-CV-21-000097

BOARD OF COUNTY COMMISSIONERS WASHINGTON COUNTY, et al. *

Respondents *

* *

TRANSCRIPT OF PROCEEDINGS
(Public Information Act Trial)

October 25, 2023
Courtroom No. 7
Circuit Court
Hagerstown, Maryland

The above-entitled matter came on for hearing

Before:

The Honorable Richard E. Jordan, Associate Judge

Appearances:

Jacob L. Weddle, Esq., on behalf of the Plaintiff

and

Kevin Karpinski, Esq., on behalf of the Respondents

Transcribed from electronic recording by:

Dee Barnhart, Court Reporter
Circuit Court for Washington County, Maryland
24 Summit Avenue, Room 222, Hagerstown MD 21740
(240) 313-2554

INDEX

October 25, 2023

	Page
Exhibit Index	3 - 3
Preliminaries	4 - 18
Testimony:	
Benjamin Andrew Bright, Esq.	
Direct - Mr. Karpinski	19 - 21
No Cross	------
Respondents Rest	21 - 21
Closing Arguments:	
By Mr. Weddle	22 - 67
By Mr. Karpinski	67 - 95
Rebuttal - Mr. Weddle	95 - 108
Rebuttal - Mr. Karpinski	109 - 112
Court Holds Ruling Sub Curia	112 - 117
Stenographer's Certification	118

OoO

EXHIBIT INDEX

October 25, 2023

	Marked for Identification	Admitted Into Evidence
Petitioner's Exhibits:		
No. 14 Email 09/28/20	------	9
No. 15 Letter 09/24/20	------	9
No. 23 Email 10/19/20	------	9
Respondent's Exhibits:		
No. 12 Email 08/09/22	10	16

OoO

P R O C E E D I N G S

(Whereupon this matter commenced at 9:36 a. m.)

THE COURT: Good morning again.

MR. KARPINSKI: Good morning, Your Honor.

MR. WEDDLE: Good morning, Your Honor.

THE COURT: Please have a seat.

MR. HOLDER: Thank you.

THE COURT: Mr. Weddle, I believe you had some more evidence to bring forth by way of documents or such. But at any rate, we're still in Petitioner's case.

MR. WEDDLE: Okay.

THE COURT: Oh, I guess I should call the case. Matter of Justin Holder, C-21-CV-21-097.

MR. WEDDLE: Your Honor, I don't have any further witnesses. Opposing counsel and I were just talking about with the clerk about certain cleaning up some documentary issues on the documents that are admitted.

THE COURT: Okay.

MR. WEDDLE: The Clerk has reminded us that on the Plaintiff's side, Exhibits 14, 15 and 23 are reserve- were reserved. I don't know if Your Honor wants to -- well first off, I don't know if counsel, opposing counsel is still asserting an objection. And if so, I don't know if Your Honor wants to hear more argument

on that or what.

THE COURT: My recollection on that is vague. What were those about again?

MR. KARPINSKI: Let me grab it, Jake.

MR. WEDDLE: I've got them. 14 was a - - an email between Judge Michael and Adam Greivell that Mr. Greivell spoke about dated September 28th, 2020. That was going in the exchange that they were having about Mr. Holder's criminal charges. You may recall, they were having an exchange about the propriety of those from Mr. Holder's perspective.

The next email was literally the same day, 15, Plaintiff's Exhibit 15. It was an estimate of damages to the - - the purported estimate of damages to the alleged state park property, and it was the Maryland Department of Natural Resources experts, Robert Schwartz's letter to Mary Ironside, who's the park ranger for the South Mountain Recreation Area.

THE COURT: Were those damages, in the contents of that, were they allegedly relating to Mr. Holder himself or just in general this is what it would take to take care of the issue? And I think that on that matter that that would be governmental costs, not an individual citizen's cost.

MR. WEDDLE: Well they…

THE COURT: So correct me if I'm wrong.

MR. WEDDLE: I think they were claiming that the cost to replant the damaged area with bareroot seeding, seedlings is approximately $460.50.

THE COURT: Yeah. Out of whose pocket?

MR. WEDDLE: I mean I would - - I would - - that's a - - that's an interesting…

THE COURT: Park and Planning or - - or…

MR. WEDDLE: I'm sorry?

THE COURT: …Parks? Out of the Parks pocket, right?

MR. WEDDLE: Well, yeah…

THE COURT: Let's put it this way, it doesn't matter whose pocket it is out of unless it's out of Mr. Holder's pocket as far as I'm concerned.

MR. WEDDLE: Well I, you know, I - - I would suspect that maybe they were - - were seeking essentially restitution of that - - of that amount. One of the important things about Plaintiff's Exhibit 15 is that Mr. Schwartz, the forester, states that these occurrences were on private property adjacent to the Weverton Rail Trail rather than on a public land itself. So it, again, that goes to our argument that the - - the underlying investigation, you know, is - - is essentially a sham and - - and - - and the State's

own expert recognizes that. So, you know, Your Honor, I don't want to misrepresent…

THE COURT: So you're not offering it as a measure of damages with respect to your client?

MR. WEDDLE: Correct.

THE COURT: Okay.

MR. WEDDLE: We're not - - we're not - - Mr. Holder didn't pay the $462. We're not…

THE COURT: Right.

MR. WEDDLE: …suggesting he did. I don't know what…

THE COURT: Okay, and I realize you're offering it for another reason, okay.

MR. WEDDLE: Yeah, okay.

THE COURT: 25?

MR. WEDDLE: 23, Exhibit 23 is an email from Judge Michael, then Deputy State's Attorney, on October 9th, 19th, 2020, to Mr. Greivell. This - - this email was in response to Mr. Greivell's letter dated, which is at Plaintiff's Exhibit 21, dated October 19th of the same date. And Judge Michael is basically saying, you know, "I didn't read it. Don't spoil the ending for me, couldn't devote more time to it." You know, "Save - - save your breath. Save your electronic ink and effort. I'm not gonna - - I'm not going to read

this." And that goes to obviously our contention that there was really no investigation afoot.

THE COURT: All right, and the argument was relevance?

MR. KARPINSKI: Yes, it's - - it's relevance, Your Honor. I mean I - - I think we sort of plowed this ground before, which is, you know, as far as I'm concerned unless there's some linkage to show that Mr. Bright or Mr. Downey were aware of these investigations and/or were aware of some alleged sham investigation, which I respectfully submit was not going on, they're not relevant. They're discussions between the State's Attorney's Office and defense counsel. And I don't see how they could possibly serve as a link to show that there was a willful, wanton failure to comply with the Maryland Public Information Act by the Respondents in this case.

THE COURT: The Court's going to admit 14, 15 and 23 recognizing the objection but also taking into consideration that this is a bench trial, and I'm able to frankly screen through cases or items that the Court concludes are really or should not really be considered per the Defendants' argument and understanding that the reason they're offered is not for facial contents of the exhibits but to - - to

relate to the investigation or lack of investigation going on to the extent it may or may well not be related to the claims here. Those exhibits are admitted.

(Plaintiff's Exhibit Nos. 14, 15 & 23 Admitted Into Evidence)

MR. WEDDLE: Thank you, Your Honor. Your Honor, like I said, I don't - - I don't have any further evidence with that being said. So I'll ask Mr. Karpinski…

THE COURT: So Petitioner rests.

MR. KARPINKSI: So, Your Honor, I - - I have - - well let me start with marking the exhibit, and I would like to address the Court about it.

THE COURT: Okay.

MR. KARPINSKI: Your Honor, during yesterday's cross-examination of Mr. Holder, there was an email that I basically told him that and he had two lawyers. And, you know, I wanted to deal with his lawyers. I did not want to continue to deal with him on multiple MPIA requests. And Mr. Holder did correctly point out that that did relate to the civil war trail MPIA request that was at issue. It was one of many - - many other MPIA requests. But one of the issues in this Court the case that Your Honor has been asked to

decide is whether there was willful and wanton refusal to produce records that relates to the August and October email exchanges between Mr. Bright and then Deputy State's Attorney, Joseph Michael. And I think part of that is is that a response to that MPIA request that was dated June 30, technically had been at the very end of July. I'm not very good at math, but sometime at the end of July. And I think it's undisputed that the documents were actually produced on August 3rd or 4th. And I would like to introduce Exhibit 12.

(Respondent's Exhibit No. 12 Marked for Identification)

And the reason for trying to introduce Exhibit 12, Your Honor, is - - is the issue of, and I'm sure Your Honor in many years on the bench gets to the issue of excusable neglect or inadvertent mistakes. I am far from being infallible. And as Your Honor will see from the exhibit at the very bottom, I had advised Mr. Weddle that I was serving as the attorney to the Board of Elections and that I would be involved in canvassing basically starting on, "The canvass tomorrow at 10:00," so that would have been July 21, "And scheduled for Thursday, Friday, Saturday and Monday and then a provisional canvass started on

Wednesday with another canvass on the 29th." Your Honor as a Montgomery County resident may recall, we actually had a recall - - recount. We had a recount in the County Executive race. I was not in my office. And so the reason why there was a delay in getting the response out was because, quite frankly, I was attending to other matters and there was an oversight in my office. And I certainly will represent that as a member of the court that that's the reason. I also have, if the Court wishes to take judicial notice of the minutes of the - - the Montgomery County Board of Elections canvass for the 2020 primary, all of the dates that I would have been out of my office and attending to that. And so I'd - - I'd like to do that because it goes to count four and whether, quite frankly, these gentlemen and the County can be held liable for a four-day delay in responding to a MPIA request when in fact my office was tasked with doing it. And I would respectfully submit the delay, although very minor, small in nature, was the result of other activities that I was attending to at the time.

THE COURT: Okay. Any problem with - - basically you'd like me to take judicial notice of the recount and the demand it had on you in representing the

Board?

MR. KARPINSKI: In this exhibit that I - - in this - - in Exhibit 12 that basically I - - I told Mr. Weddle I was not gonna be - - I mean it's a - - after we finished up yesterday, quite frankly, Your Honor, I said, "You know, I'm not per- I'm far from perfect, but I generally try and adhere to deadlines. And how did I miss this?" And I missed it now that I look back at it, I missed it because I wasn't there. And, quite frankly, I spent from July 21 until basically the middle of August in the Montgomery County Germantown campus doing a - - a canvass of mail-in ballots and provisional ballots and then doing the recount for the County Executive's Office. So I - - I don't wish the Court to be misled into believing that the Defendants or the Respondents in this case willfully failed to respond to the MPIA request. That any delay was the result of any actions on their part.

THE COURT: Are you - - are you going to have somebody sponsor that or are you just asking for Mr. Weddle to - - not to concede anything with respect to the exhibit, but not to oppose its admission?

MR. KARPINSKI: That is what I'm asking.

THE COURT: Okay. What's your position, Mr. Weddle?

MR. WEDDLE: Well, Your Honor, with all due respect to Mr. Karpinski, again, with all due respect and sincerity, you know, he - - there's no witness to testify to this. There's no witness to testify to the - - the neglect, excusable, inexcusable, and - - and it goes far beyond - - it goes far beyond this exhibit, which I'm assuming is marked as Defendant's 12. Your Honor heard testimony about count four and - - and count four, the genesis of that was the answers to interrogatories that we looked at, the Defendant's answers to interrogatories number 8, where they listed the - - the four communications that - - that comprised of count - - that were comprised of count four. Those - - those answers to interrogatories were submitted in March literally four months prior to this email. They should have been produced then. Well they weren't, and Mr. Holder made not one, not two, but three further requests to produce those. And the first request was on May 7th. Okay? The second request was on June 16th, and the third request, which Mr. Karpinski would want to anchor this Court to, was on June 30th. Now Mr. Holder had - - should have been provided these documents back in March. But - - but at minimum, they should have been provided in response to the May 7th request. There's a suggestion that

there is a 30-day time period to respond. That's the outside limit. Okay? When these four documents were identified, they should have been provided within the next day or two. I mean it doesn't take long to compile four emails and send them along especially when you've already identified them. So they should have been produced in May. They should have been produced, if not, they should have, I'm sorry, they should have been produced in March of '22. They should have been produced in May, if not, they should have been produced in June. And here we are in July, and - - and now it's being represented, "Well, you know, we had 30 days from June 30th. So that would take us to July 31st or 30th, and I was - - I was canvassing, and my office missed it." Okay? Again, with all due respect to Mr. Karpinski, I don't think he can stand up here and testify to that. There's, you know, Mr. Parkins, who I understand to be his former colleague, was copied on these - - these emails as well. There's been no - - there's been no suggestion that Mr. Karpinski, I'm sorry, Mr. Parkins missed the deadline or Mr. Parkins couldn't have fulfilled the request as Mr. Parkins has done a number of things in this case and has - - has, you know, attended hearings and argued hearings and so on and so

forth. So, yeah, I have - - there - - there is a problem. We do have a problem with the admission of this.

And, right, and - - and one other point, there's no - - there's no testimony from the County or any of the Defendants that they missed the deadline as well. I mean it's - - it's ultimately their obligation as well to meet the deadlines as they've done in the past. They, you know, they're the custodian of records, and they respond to these types of things. So that - - that sort of - - that's sort of our - - our position, our objection to Defendant's 12 and any testimony that Mr. Karpinski may have given on the issue of excusable neglect.

THE COURT: All right, the Court has the discretion under the rules. It's sort of a general exception to hearsay or other objections to admission of evidence and that is the Court's discretion to see the - - or to conclude that an exhibit is what it purports to be. And as I see it, the only way to get it in evidence without or with testimony is to call Mr. Karpinski, and I'm not going to put him in that position. The Court's going to exercise its discretion to admit Exhibit 12. I think part of the argument from the defense is that there - - or should

I say reasonableness on producing records, whether or not there was a great volume of requests. And I think it goes in both directions. And the Court takes that into consideration as well in admitting Exhibit 12 for the Respondent.

(Respondent's Exhibit No. 12 Admitted Into Evidence)

MR. KARPINSKI: Thank - - thank you.

THE COURT: Particularly since at least the representation that I'm hearing is that the documents were produced arguably four days late, arguably significantly longer time than that. But my understanding is the documents were produced, which would counter, tend to counter, I believe, at least arguably counter an argument that there was willful and wanton motivation to deny or to delay the production of records. If anything I've said is wrong, I'd like to hear from somebody.

MR. KARPINSKI: Well I - - I don't believe there is, Your Honor. And - - and Mr. Weddle said that, "Well the documents should have been produced in May." There was a response that was - - a response to the May request, which is part of the - - I know we - - we've inundated the Court with paper here. But I - - I just want to direct the Court's attention to

paragraph 117, and 117, which is so in May, there was a request. There was an objection based upon attorney-client privilege. There was further iteration of follow-up with Mr. Holder. And then the June 30 request from Mr. Holder was sent. And I'm just gonna read paragraph 117 because I think it's significant to Your Honor's consideration of count four. "On Thursday, June 30, 2022, at 4:07 p. m., Mr. Holder sent Defendant Downey and Defendants' counsel an email requesting, quote, 'All emails between Honorable Deputy State's Attorney (including Joseph Michael or Kenneth Shapiro); and now or former County Attorney B. Andrew Bright sent or received on August 4, 2020 and October 14, 2020, that contain the following words: 'Justin,' 'Holder,' 'Public,' 'Information,' 'Request,' 'Investigation,' 'Law,' or 'Enforcement.'" And there was clear testimony given by Mr. Holder yesterday that those documents were produced on August the 3rd or 4th. And so I know now Plaintiff's counsel is trying to go further back in time. That's not what is contained in count four. And really the question is, Your Honor, is it - - is it willful and wanton in response to a June 30 MPIA request that it's answered on August 3 or on August 4? And I acknowledged it was more than 30 days. I also

acknowledged that, quite frankly, I had a lot of other things going on, and it certainly was not willful or wanton on behalf of the Respondents in this case.

THE COURT: As I said, 12 is admitted.

MR. KARPINKSI: Thank you. And, Your Honor, I guess the good news here is because we called a couple of witnesses, one witness out of order, and we called Mr. Bright in the Petitioner's case, I'm going to recall Mr. Bright for one limited purpose and then we are going to rest.

THE COURT: Okay. Thank you.

MR. KARPINSKI: May I approach the Clerk and…

THE COURT: Yes.

MR. KARPINSKI: …return the exhibit?

THE COURT: And you're ready for Mr. Bright at this point?

MR. KARPINSKI: Yes, sir.

THE COURT: All right, Mr. Bright, if you can step on up.

TESTIMONY OF BENJAMIN ANDREW BRIGHT, ESQ.

BENJAMIN ANDREW BRIGHT, ESQ., a witness, produced on call by the Respondents, having been previously sworn according to law, was examined and testified as follows:

THE COURT: You're still under oath.

A: Understood.

DIRECT EXAMINATION

By Mr. Karpinski:

Q: For the record, would you state your name?

A: Benjamin Andrew Bright.

Q: You were here for testimony regarding email exchanges between you and members of the State's Attorney, the testimony from yesterday, were you not?

A: Yes, I was here.

Q: Okay. So just so that it's clear on the record, were you deposed in this case?

A: Yes, I was.

Q: And do you recall the date of your deposition?

A: Late September, I think the 26th of 2022, so a little more than a year ago.

Q: Let's not leave much to guess here. Let me hand you your deposition.

A: All right.

Q: Okay? And you could probably tell the Court what date your deposition occurred?

A: The date was September 26, 2022.

Q: And that deposition occurred in Mr. Greivell's office. Is that correct?

A: That's correct.

Q: Okay. Were you asked questions about the

email exchanges between you and the State's Attorney's Office?

A: Yes, I was.

Q: Okay. And how long was your deposition?

A: It took several hours. It's, I don't know, 140 some pages, 160 some pages long.

Q: Okay. But Mr. Holder was present. Is that correct?

A: He was present in the room.

Q: Mr. Weddle was present?

A: Mr. Weddle conducted the deposition.

Q: And you were asked questions about the dep- the emails that were exchanged between you and the State's Attorney. Correct?

A: Yes. I - - I was asked generally about communications between myself and Judge Michael, then Deputy State's Attorney, Joe Michael. And Mr. Weddle asked me if our conversations had been memorialized or reduced to writing in some fashion. And I said that I thought that there were some emails. And then he showed me at least one of the emails. I - - I haven't gone back through, but at least one of the emails that between Judge Michael and myself.

Q: And were you asked about any conversations you had with Judge Michael?

A: Yes, I was asked about those conversations.

Q: Those are all the questions I have, Your Honor.

END DIRECT EXAMINATION

THE COURT: Okay. Any cross?

MR. WEDDLE: No, no, Your Honor.

THE COURT: All right, thanks, Mr. Bright.

A: Thank you.

END TESTIMONY OF BENJAMIN ANDREW BRIGHT, ESQ.

MR. KARPINSKI: Your Honor, it's not that Mr. Bright doesn't have not only a vested interest in this case, but a personal interest, but may he be excused? As Your Honor's well aware, the Sheriff's Office has had a very trying week.

THE COURT: Right, sure, absolutely.

MR. KARPINSKI: He would like to get back to work on certain things.

THE COURT: Thanks for being here, Mr. Bright. Good luck with things.

MR. BRIGHT: Thank you, Your Honor.

THE COURT: Everybody's concerned.

MR. KARPINSKI: With that, Your Honor, Respondents will rest.

THE COURT: Any rebuttal case?

MR. WEDDLE: Can I have a minute to confer…

THE COURT: Sure.

MR. WEDDLE: …with my client? We have no rebuttal. Thank you, Your Honor.

THE COURT: Is there anything further other than closing arguments?

MR. KARPINSKI: No, sir.

THE COURT: Do - - do either of you need a few minutes to get thoughts together? Or are you ready to roll?

MR. KARPINSKI: I'm ready to roll.

MR. WEDDLE: Who's going first since it's their burden?

THE COURT: Well I think you would go first. But I'll - - I'll hear argument otherwise. I hear you about burden, but…

MR. WEDDLE: That's fine.

THE COURT: …you put on the case first, and I think…

MR. WEDDLE: I understand.

THE COURT: …it would be helpful.

MR. WEDDLE: Well first off, Your Honor, I'd like to thank you, your staff and the clerk and everybody for their time and care and attention over the course of the last week in obviously hearing this case and giving it the care it deserves and one that's of great

import to Mr. Holder. In crafting the - - the Maryland Public Information Act, the General Assembly sought to promote the disclosure of public records. This objective is memorialized in the statute itself. And all persons are entitled to have access to information about the affairs of the government and official acts of the public officials and employees. The Maryland courts have repeatedly held that the statute should be interpreted in favor of disclosure. And in fact, the Maryland Public Information Act has a general presumption in favor of disclosure of government or public documents. The act reflects the legislative intent that citizens of the state should be accorded wide-ranging access to public information concerning their government. And unless unwarranted invasion of privacy of a person of interest would result, the act should be construed in favor of inspection of the public record with the least cost and least delay to the person that requests inspection.

It's part of every agency's mission to be as transparent as the state's sunshine laws allow and - - and require including the Public Information Act. And the public records request is not an occasion to play hide and seek. So given the general remedial tenor of

the statute, the legislative intent to afford citizens wide-ranging access to documents, the fact that the interpretation of the statue favors disclosure, the fact that the burden is on the Defendant to justify denial and withholding of the documents and that there's a construction favoring inspection with the least cost and delay, all of those weights are stacked in the scale pan of disclosure and tip the scales in favor of production.

Upon that general backdrop and for ease of presentation, I wish to first present argument regarding the lesser complicated counts, which are four, three and two before arguing count one.

THE COURT: Okay.

MR. WEDDLE: Mr. Holder, Your Honor, was forced to bring suit on count four, which seeks redress for the unlawful withholding of the four email communications during August 2020 and October 2020. Those were called the Michael, Bright - - the Bright/Michael emails. Under General Provisions, which I may call GP, under General Provisions 4-203(b)(1), if a custodian determines that a record is responsive to a request and open to inspection, the custodian must produce the record immediately after receipt of the written request, immediately. An additional

reasonable period of time, however, is given not to exceed 30 days only where the additional period of time is required to retrieve the records and assess their status under the Public Information Act. And that's from the PIA - - PIA Manual at 4-3. Here, any suggestion by the Defendants that they are absolutely afforded 30 days to respond to any Public Information Act request, Mr. Holder as to the count four documents, is just simply untenable. The Bright/ Michael emails were unquestionably open for inspection, and Defendants should have produced them immediately.

THE COURT: Does the statute provide a basis for damages for delayed, let's say more than 30 days, and I realize that you're arguing that it should be immediate and that doesn't mean 30 days is how long a responder has, but is there a statutory damage provision for, don't read too much into this, mere delay in producing beyond the 30 days?

MR. WEDDLE: There are statutory damages of not, I believe the statue says, not exceeding $1,000. So that requires a knowing and willful component to it. Of course, Mr. Holder could also get actual damages. That requires a knowing and willful component. However, Mr. Holder can also recover his attorney's

fees and costs for having to bring this suit to get the documents. And the attorney's fees and costs provision does not have any knowing or willful element, any requirement, any knowing or willful predicate to it. He has to substantially prevail. And here, he did - - he has substantially prevailed. Your Honor, you know, I'll try to sort of cut this shorter because we argued about…

THE COURT: So there's nothing in the statute specific to delays?

MR. WEDDLE: There's noth- to my knowledge, there's nothing in the statute that says, for example, if - - if the Defendant is five days late, there's a safe harbor. Or if, you know, the Defendant has to be, you know, 30 - - more than 30 days past the 30 days. There are - - they're simply there's attorney's fees, statutory damages and actual damages. Those are the monetary sort of damages that the Act affords.

Your Honor, but again, again, this is not a 30-day delay. This is not a 30-day delay. Because here, these documents should have been produced in the ordinary course of discovery. And let - - let me - - let me back up to that. Because Your Honor was - - because Your Honor was not the - - not involved in the trial court because the - - the prosecution of this

case, I'm - - I'm gonna just mention that we didn't get discovery at all from the Defendants until after we filed a motion to compel those responses. Okay? In that motion, after we filed that motion, that was filed on March 14 of 2022, after we filed that motion in response to that, we received answers to interrogatories. And those answers to interrogatories alerted us - - alerted us of these Bright/Michael emails on March 29th. They're listed in the answers to interrogatories. Your Honor has been doing this for a long time. I think it's - - it's - - it's just very reasonable and almost obvious to say, "Well if the documents are answers are referenced in the answers to interrogatories, and you've got requests for the production of documents out there, why the heck were they not produced with the answers to interrogatories?" Okay, that - - that's a very fundamental question, and they weren't.

So Mr. Holder made a series of - - of requests beginning on June 7th, June 7th of 2022, I'm sorry, May 7th, excuse me, May 7th of 2022. And the response we got from that was that, "There - - these four documents are not being produced subject because they are attorney-client privileged and our work product document." That's at Plaintiff's Exhibit 31. Well

Mr. Holder took it upon himself to say, “Look, fellows, they’re not subject to attorney-client privilege or work product doctrine because in your answers to interrogatories, you say they’re non-privileged. So please give them to me.” And he even screen-shotted that. Did he, you know, did he immediately sue when they said their, you know, attorney-client privilege and work product doctrine and that - - that information went against their answers to interrogatories? Did he immediately sue then? No, he did not. Instead, he sought to work with the County in what he calls an iterative process to obtain the non-privileged documents. To that end, he submitted another request. He renewed - - renewed his request on June 16th. He, you know, again, he points out John Martirano’s on behalf of the Defendants’ answers to interrogatories. He provided the screenshot. Having not heard from the County in two weeks, having not received the documents, he was resolved again to try to get them. So what did he do? On June 30th, he made another request. He renewed his request. He again provided the screenshot. He again reminded the County that this isn’t a game of hide and seek. It’s not a game of thrust and parry. He’s just trying to get the documents. And, you know, he stated

that the County's motion to stay or enjoin him from filing additional PIA requests, indeed one that is the only kind ever filed by the County against another citizen, does not allow it to deny his request for the production of non-privileged documents. The County didn't produce the four documents by July 30th. Okay? What is Mr. Holder to do? Okay? He - - he doesn't - - he can't assume - - he can't assume that the County Attorney committed excusable neglect. He can't assume that the County Attorney, with all due respect to Mr. Karpinski, I know he's a busy man, but he can't assume the County Attorney is going to respond to - - to it. The County's attorney, not County Attorney, excuse me.

So what did he do? He amended his Complaint. He amended his Complaint on the date, the - - the - - the amendment of right deadline, which is August 1st, to include these emails. And - - and what do we have? Well on August 4th, they show up. Okay? They only show up after he files suit, after he goes to the expense of filing suit. They don't show up back in March. They don't show up back in June. They don't show up in July. They only show up when he files suit.

There's - - there's been a suggestion by the Defendants that Mr. Holder has engaged in some kind of

gotcha game. I think was the terminology used. He certainly is not. If he were playing a gotcha game, he certainly wasn't very good at it. One playing a gotcha game would make one request and then sue. That didn't happen here. Instead, Mr. Holder made not one, not two, but at least three requests for - - and renewed demands to Defendant seeking the Bright/Michael emails before filing suit. And, Your Honor, you know, I - - I respectfully submit what more - - what more could he have done? You know, he's simply - - simply been put, you know, think of it this way, if he would have made a fourth, a fifth, a sixth request, then he would be labeled, you know, then he would be labeled a vexatious litigant. That would have, you know, run up the score board of requests that the County's keeping on him. You know, it would only give him, the County more - - more fodder to characterize him as vexatious, overbearing or whatever other adjective the County wants to assign to him. He simply can't win. You know, the only - - the uncontroversial - - uncontrovertible fact remains the Defendants, again, only complied with his request after he filed suit. They had every opportunity to do so months before, and they refused. It's a knowing and willful violation of the Maryland Public

Information Act.

THE COURT: And do you contend that within the evidence there is support for actual damages to Mr. Holder? I realize that's only one aspect of the damage claim if you want to include attorney's fees in that.

MR. WEDDLE: Your Honor, I missed, respectfully, I missed the first part of your question.

THE COURT: Is there any evidence of actual damages caused by the delay and the effort to obtain documents beyond say filing fees and just a hassle putting together a new Complaint and so forth?

MR. WEDDLE: Not with respect to count four, not with respect to count 4. You know, he, excuse me, yeah, Mr. Holder had to, you know, incur as - - as we put into evidence, Your Honor, I'm sure you're gonna take a look at it, I believe it was - - as Your Honor will - - will see in Exhibits 50 and 51, Mr. Holder has incurred a substantial amount of legal fees in this case. You know, the number - - the number, quite frankly, is - - is shocking. You know, he's incurred $90,000 in legal fees and costs with respect to this case and that doesn't include much of this trial. Mr. Holder, again, is left in very untenable position with respect to these attorney's fees. He is left to

prosecute this case to the exhaustion. If he doesn't do that, he will never recover any of his attorney's fees or any of his damages because, you know, he's got to prevail. He's got to substantially prevail. And unless the County writes him a check, he has to - - he's in, you know, when he files suit, he's in. And if he's going to - - and if he's going to get justice, he needs to see it through to the end.

And this case, you know, this case, and I - - and I point Your Honor back to the docket, this case has - - has sort of taken on a life of its own from the Defendants. I mean they've - - they have litigated this case hammer and tong. They filed four dispositive motions. They filed motions to quash and for protective order. They've refused discovery. They forced them to file motions to compel. They filed a mo- emergency motions. They filed motions to clarify orders. The list goes on and on. And all the while, Mr. Holder's fees just kept going up and up and up. I mean he had no other recourse but to continue. He had to litigate it to exhaustion to have the ability to recover his fees and costs, let alone his statutory or actual damages. You know, we perceive this is a ground game. It - - it's - - it's the Defendants have sought to make this case and his

pursuit of his case and the recovery of the documents as costly and as burdensome as possible. You know, the Defendants can't litigate and relitigate and then complain about the reasonableness of the fees. I mean they filed the four dispositive motions that all - - that all have been denied. And they've - - they've caused him to incur fee after fee, expense after expense. This, Your Honor, is the antithesis of the MPIA, which is to provide the documents for the least cost and delay to the person that requests the documents possible, the least cost and delay, not the most. I hope I answered Your Honor's question.

THE COURT: Okay. I take that to mean that there are no actual damages beyond the - - the ones that I mentioned and the claim for attorney's fees upon a finding of substantially prevailing and then the statutory $1,000.

MR. WEDDLE: Fair enough.

THE COURT: Okay.

MR. WEDDLE: Your Honor, count three relates to the Defendants' unlawful withholding of a June 20th, I'm sorry, a June 2020 email originated from Christine Morral and sent to the Washington County Public Safety Systems Manager Barry Levey. We've been calling this the - - the Levey email. Mr. Holder testified that

Mr. Levey is a - - is named on the roster of the Washington County employees. Mr. Levey is the Public Safety Systems Manager for the Washington County Sheriff's Office.

THE COURT: Is that count three or two?

MR. WEDDLE: This is count three. Mr. Levey is either a County official or works in the Sheriff's Office. Regardless of his role, there's no dispute that Mr. Levey's emails are maintained by the County, that they're on - - that they're maintained on County servers and that the County has the ability to access them. As Plaintiff's 5 illustrates, on June 1st, 2020, Mr. Levey received in his County-issued email account an email containing three attachments. One attachment to this Levey email was a photo jpeg file. A second attachment was a video.mov file. And a third attachment was another video file titled, "Video_1.mov." Mr. Holder contends, and I don't think there's really been any testimony to the contrary, that these files contain illegal wiretapping videos taken by Ms. Morral of Mr. Holder and then circulated to the Town of Keedysville and then later to Barry Levey at his County-issued email address. While Mr. Holder concedes that he received the text of the Barry Levey email from the Town of Keedysville, Mr. Holder

has not been able to obtain each of the three attachments, the jpeg photo file and the two wiretap videos. Indeed, he sought to - - he testified that he sought to obtain both the Levey email and the attachments from the Town of Keedysville. However, for a litany of reasons, he was unable to do so. There was testimony that the Town was unwilling to turn it over. The Town changed its computer systems. The Town's hard drive had been corrupt so on and so forth. Unable to obtain both the email and the attachments from The Town of Keedysville, Mr. Holder sought to obtain the email from the County as was his right. The Defendants have neither produced this email to Mr. Holder and now, or the attachments, and now claim that it is unretrievable, may have been deleted or is otherwise unavailable because it's outside the bounds of the County's document retention policy. All despite Mr. Holder's request for the same more than two years ago. Your Honor, the Defendants' argument is contrary to common sense and prudent practice and frankly a strange belief. On June 15th, literally two weeks after Mr. Levey received the two wiretap videos, Mr. Holder made a PIA request seeking, quote, "All emails between the email address blevey@washco-md.net for the past three years."

That's at Plaintiff's Exhibit 2.

Shortly thereafter, Mr. Josh O'Neal, who's the County's IT technician, Chief Technology Officer, excuse me, searched for Mr. Levey's account and determined that Mr. Levey had 45,239 emails in his account. And that's at Plaintiff's Exhibit 2. On June 23rd, 2020, Mr. Bright sent Mr. Holder a letter confirming this and requested a $5,000 deposit to commence the search and retrieval of those emails. Had Mr. Holder paid the deposit as requested by the Defendant Bright, the County would have gone about the task of producing the requested emails, which had to have included the Levey email that he received two weeks earlier. Mr. Levey was a witness who became hostile to Mr. Holder right before this Court's very eyes and testified that he would keep approximately 20,000 emails in his email account. Of course, Mr. Levey's testimony isn't corroborated by the fact that there were more than 45,000 emails in his account as of June 15th, 2020. And this number, this 45,000 number, does not suggest that Mr. Levey had a practice of routinely deleting emails. It's an astounding amount. It's an astounding number of emails. Mr. Levey testified that every six months, he would delete his emails so that he would have approximately 20,000

emails in his account. Again, in June, he had more than 45,000 emails in his account. He didn't seem to have any pattern and practice of deleting emails or otherwise maintaining his account. And why would that be? Well, you know, the County's email account, I think was the testimony was that it can hold 10 gigabytes of email data. Per Defendant's Exhibit 6, Mr. Levey's account had 5.87 gigabytes of data. So he had more than 40% capacity remaining. So why would he need to delete emails? When he was pressed on this issue, Mr. Levey testified that he deleted emails from his account because too many emails made searching for them more difficult. When he was probed on this, he admitted as he must, then when searching an email account, the account displays the search results from the newest to the oldest. So the computer does the work for you. The number of emails in one account doesn't account, doesn't make searching it - - searching for a particular email more difficult. Anybody who has familiarity with emails and searching email accounts, which I think we all do, knows this.

Even if Mr. Levey's testimony is found credible, and I suggest it's not, he testified that he deleted the emails from oldest to newest. Thus, an email received from Ms. Morral on June 1st, 2020, would

literally have been one of the most recent emails received as - - as of Mr. Holder's June 15th, 2020, request. Indeed, if Mr. Levey did in fact purge emails, think of how long it would have taken him to cycle through and purge 20,000 emails. For example, if he worked 250 work days a year, and he received or sent 40 emails a day, which is a lot, each and every day, it would have taken him two full years to amass 20,000 emails. So it stands to reason that the Levey email, which he received from Rick Bishop on June 1st, 2020, was one of the 45,239 emails in his account as of June 15th, 2020. In other words, there's simply no credible evidence to suggest that the Levey email was not still contained within his email account when Mr. Holder requested the County produce his email account on June 15th.

We heard testimony from Mr. O'Neal, the - - the County's Chief Technology Officer regarding the County's search for the Levey email. On the first day of trial as well as yesterday, I specifically asked Mr. O'Neal the following question, "During your testimony, you advised that it would be your practice to either email the PIA search results to the County Attorneys or send the search result to the County Attorneys via an internal link. Correct?" His was

response was, "Yes." I then asked Mr. O'Neal, "And it was your testimony that with respect to the search for Barry Levey email account from the past three years, you emailed Mr. Bright an internal link to those files. Correct?" His response was, "Yes." Mr. O'Neal then concluded that his testimony last week was still true as of yesterday.

MR. KARPINSKI: Well I object. It mischaracterizes his testimony.

MR. WEDDLE: I think…

THE COURT: You…

MR. KARPINSKI: It's argument.

MR. WEDDLE: I think you can bring that up if you like.

THE COURT: Well I'll rule on the objection, which is that on that limited point, the Respondent can argue to the contrary. Just make a note that you want to do that, and I'll hear both of you.

MR. WEDDLE: Thank you. Yet despite Mr. O'Neal's testimony that he would have sent the entirety of the Levey email account to the County Attorney's Office for response to Mr. Holder's request, Mr. Levey and the Defendants now take the position that the June 1st, 2020, Levey email was now deleted. But no one knows when and no one knows how. And - - and there's

simply, you know, there's - - there's no - - there's no testimony as to when that email was deleted. It's just not there according to the Defendants. And this email was purportedly deleted in spite of the preservation letter sent from Mr. Holder to the County on December 20th, I'm sorry, December 23rd, 2020, seeking, Your Honor, Mr. Holder sent them a preservation letter seeking, asking them to preserve MPIA requests that he made in 2020. I think Your Honor should consider the context of this preservation letter. First, you know, the Defendants have taken great pains during the course of this trial to characterize Mr. Holder as someone who's in a league of his own. Well in some respects, Your Honor, that's true. For example, most private citizens wouldn't have the knowledge or the wherewithal to send another party a - - a preservation letter reminding them of their duty to protect and preserve evidence. This letter put the County on notice to preserve and protect the results of the 2020 PIA requests that he submitted including the request related to Barry Levey's email.

Were Mr. Holder aggrieved by the Defendants' decision, he could have filed a suit for it within the two-year statute of limitations period applicable to

suits alleging violations of the PIA. That's at Court's and Judicial Proceedings 5-110. Thus, the Defendant should not have allowed Mr. Levey to irrevocably purge the contents of his email account during the pendency of that statute of limitations period. Yet, despite all this, Mr. Bright testified that he took no actions to preserve the results of Mr. Holder's 2020 PIA request. In late August or September of 2021 and after receiving the documents that are reflected in Plaintiff's Exhibit 7, Mr. Holder continued to ask the County for the Levey email. He sent correspondence to the County on August 23rd, 2021, and September 1st requesting the same. On September 27th, 2021, as reflected as Plaintiff's Exhibit 4, Mr. Karpinksi wrote to Mr. Holder stating that basically, "We sent you no other records other than what we sent you on August 23rd could be retrieved." And basically, "Individual folks maintain their own email accounts and deleted emails are no longer accessible after a certain period of time. The established email retention settings no longer cover the date/range you're indicated. We found nothing to satisfy your request no matter how the search parameters are manipulated due to the system constraint - - the system retention constraint." I

believe Mr. O'Neal testified that there were no established email system retention settings. And thus - - and thus, the users can delete emails as they please. At the end of the day, Your Honor, the Defendants' refusal to produce, to preserve, to protect, to maintain this Levey email is a knowing and willful violation of the Maryland Public Information Act.

And I'm going to move onto count - - move onto count two. Count two pertains to the Defendants' unlawful failure to produce a June 24th, 2020, email sent from Christine Morral to the Town of Keedysville and to the Washington County Sheriff at the time, Douglas Mullendore, and Washington County Colonel Randy Wilkinson. We call this the Morral/Town of Keedysville email. It - - the Morral/Town of Keedysville email should have been produced by Defendants in response to Mr. Holder's August 4th, 2020, request, i. e., it should have been produced no later than September 4th, 2020. It should have been produced by the Defendants in response to Mr. Holder's October 14th, 2020, request. And it - - or it should have been produced in response to Mr. Holder's January 21st, 2021, request. Instead, this email was produced to Mr. Holder on or about August 31st, 2021, five and

a half months after he filed suit. The Defendants have Bates labeled the Morral/Town of Keedysville email at Plaintiff's Exhibit 7, and it's Bates labeled, "Holder's PIA Response 1." It appears that the town - - the Morral/Town of Keedysville email was commingled with other documents. The - - it appears that the Morral/Town of Keedysville email was inappropriately labeled as a document relating to an open investigation or criminal proceeding and withheld from production. Yet Mr. Bright testified that the Morral/Town of Keedysville email that was also sent to then Sheriff Mullendore and Mr. - - and then, I think, Colonel Wilkinson should not have been withheld from production under GP 4-351. Indeed, the Morral/Town of Keedysville email was sent - - was not sent to the State's Attorney's Office or to Judge Michael. It was not part of his investigatory file. It was sent to a town. It couldn't have been part of his investigatory file. As Plaintiff Exhibit 1 illustrates, Plaintiff's Exhibit 1 is - - is the email correspondence between Mr. Bright and Judge Michael in response to or related to the Mr. Holder's August 4th, 2020, request. That correspondence, in that correspondence, Mr. Bright notes that the 16 emails that Mr. O'Neal provided him are emails between the Morrals and you. It wasn't

included - - this Town of Keedysville email wasn't included, according to Mr. Bright's email, in that ZIP file. It should have been. It - - it should have been. The search should have recovered it. The search should have recovered it because it was an email between Morral and a sheriff, the Sheriff's Office. It should have been recovered. It shouldn't have been commingled. It should have been produced. And Mr. Holder had to sue to get it despite the fact that it should have been produced in response to his August 2020 request, his October 2020 request and his January 2021 request. The - - the Defendants' refusal to produce this Morral/Town of Keedysville email is a knowing and willful violation of the Maryland Public Information Act.

Your Honor, count one, relates to what we've termed the Morral/Michael emails. And those emails, Your Honor, are the 16 emails contained at Plaintiff's Exhibit 7. I think before we begin, Your Honor, I think a few observations on this count, count one, are of note. When Mr. Holder made his request on August 3rd, 2020, October 14th, 2020, and January 21st, 2020, he didn't know the existence of these Michael/Morral emails. He didn't know that there were any - - any emails between the two let alone 16 emails between Ms.

Morral and Judge Michael. He didn't - - he had many reasons though to request emails that would have been included in those. He had many reasons to request these emails. First, he testified that he sought to get these emails to figure out what Morral was saying about him in the public to the government, to the sheriff's, to the deputies and County officials. He testified that he was being treated differently by all manners of the government and simply wanted to know why. He testified that he was experiencing extreme resistance from the government in resolving issues related to public sewer and public water, issues of public benefit and importance. It didn't make any sense to him. He wanted to know why he was treated differently.

Another point is the County's responses, the County's responses to his request kept him in the dark as the basis of denial. While the denials reference the State's Attorney's Office and records of a purported ongoing investigation, the denials did not, for example, alert him that - - of the 16 emails that were purportedly withheld. There's no mention of that. There's no mention of what was actually being held - - withheld. There's no mention of the author of those emails, the recipient of those emails, the

date of those emails, the subject of those emails. It forced him to operate in the dark. He made the request. Each as a threshold matter, each and every of the Defendants' denials of his request pertaining to count one were proper on their face. Since the MPIA prescribes an interpretive tilt in favor of disclosure and the disclosure shall be the norm, any denial of the disclosure must be authorized by some expressed provision of the Public Information Act. Obviously, the - - the - - the exemption that is in dispute here is 4- is GP 4- § 4-351. And frankly, Your Honor, as I'll get to in a moment, I believe it's at Plaintiff's Exhibit 24, the face of this denial while it does not re- while it references 4-351, it does not reference what subsection the Defendants are claiming a denial.

In the Fiore - - in the *Fioretti* case, Judge Wilner emphasized that a custodian cannot justify non-disclosure by simply invoking the mantra that would - - that disclosure would prejudice - - prejudice an investigation. That essentially that is actually what happened here. If you look at Plaintiff's Exhibit 24, the - - the basis is given that these are records of an ongoing investigation and involve current prosecution. Precisely, however, because, let me take

a step back, this response is important because it characterized, Mr. Bright characterizes, he writes it in black and white, he characterizes Mr. Holder, first he characterizes himself as a custodian. That's in his response. Then he characterizes Mr. Holder as a person in interest. And person in interest enjoy a favored status under the law. And precisely because of this favored status enjoyed by person in interest, the obligation of a custodian is particularly heavy to justify an exemption pursuant to the - - pursuant to GP 4-351.

The *Blythe* case says that a custodian must point out precisely which of the seven circumstances enumerated by the rule would require the exception and explain precisely why it would do so. The case states that more is required than merely - - than a merely conclusory incantation of the exception. In the case of *Frederick versus Randall*, and - - and Mr. Bright testified to this case, he called it the - - the case that originated out of Frederick County that was the black book case. The judge in that case explained precisely how the more favorably treatment extended to a person of interest would manifest itself. On page 561 and 562 of that opinion, the - - the Court said that the - - a - - a custodian denying a request under

what is now GP 4-351 must make a particularized showing as to every document withheld, that every document withheld is necessary, a particularized showing. We have no particularized showing here. No one has testified, no one in this case has testified that, you know, this document in - - in Plaintiff's Exhibit 7 needs to be withheld and this document could be produced, and this document can be withheld and so on and so forth. There's been absolutely no effort to do that whatsoever. That is undisputed. Neither Judge Michael did that. Mr. Bright didn't do that. No one did that. The *Blythe* case points out that the fact that some portions of a particular record may be exempt from disclosure does not mean that the entire record can be withheld. A custodian cannot involve, I'm sorry, a custodian cannot invoke a blanket exception to shield the entire file if the shielding of only one part of the file would suffice for the purpose of the exception. That's the *Cranford* case. And the *Cranford* case has, I think been described by other courts, I can't remember which one, as sort of the polestar of severability. Okay? And that case requires severability. The statute itself, GP 4-203(c)(1)(ii) says that, "A custodian who denies a request for inspection must among other requirements

allow inspection of any part of the record that is subject to inspection." GP - - GP 4-351 itself, particularly subsection (b), and I don't have it in front of me, but it says that a custodian can only withhold a record only to the extent that - - a custodian can withhold a record only to the extent that one of the seven exceptions befalls. So in the statute itself, it gives a nod, it - - it understands, it provides for - - it provides for severability and redaction. The *Cranford* case that I mentioned earlier imposes a burden on the records custodian to make a careful and thoughtful examination of each document. In so ruling, the *Cranford* court observed that we do not crouch on the trial court's domain as the fact finder by observing that it's unlikely that over 130 documents are so inextricably devoted to a pre-decisional deliberation that no severable factual material is present in any of them.

Fioretti, in - - in that opinion, the judge made it clear at the outset that the entire record is not shielded from view simply because part of it may be. Under that, Your Honor, under the - - under that law, under that backdrop of the law, the Defendants' denials are defective as a matter of law. To begin, the - - the denials were largely the same. There's

testimony that they were largely the same. They - - they failed to enumerate the legal basis for the denial, much less so with the particularity required by *Blythe*. Mr. Bright testified that he didn't want to get into a legal argument with Mr. Holder by articulating the law. Candidly, the MPIA does not - - does not provide for such niceties. He is a - - he is a person in interest. Therefore, he must be shown and told precisely, precisely the basis for the withholding. And the custodian has a particularly heavy burden to justify an exception under 4-351. They have to point out precisely which of the seven circumstances of 4-351(b) applies. More is required than a conclusory incantation. The County has failed in this regard.

Moreover, if you look at GP 4-351, it provides that disclosure may - - may only occur only to the extent that the inspection would interfere with a valid and proper law enforcement proceeding. The word, "Interfere," does not appear anywhere in this denial. It just simply doesn't. Judge Michael, neither Judge Michael nor the Defendant has made any effort whatsoever to sever, neither made any efforts to redact, neither made any particularized showing as to every document withheld, which is necessary, as

required by the *Frederick* - - *Frederick versus Randall* case. Neither gave any careful and thoughtful examination to each document as is required by *Cranford*. And severing and - - and redaction are particularly important for the reasons articulated by *Fioretti*. You know, you simply can't say if you - - if you simply ascribe to the position that, you know, it must be withheld because we say it's so, it just, frankly, it - - it - - that just devolves and - - and ruins the Act. For these reasons alone, Defendants' denial of Mr. Holder's request as to count one was unlawful and constitutes a willful and knowing denial.

And one other point on this, Mr. Holder, it should be pointed out, you know, even though Mr. Bright did not want to engage in legal arguments with Mr. Holder, Mr. Holder - - Mr. Holder literally, again, brought this to - - this issue and put it right in front of Mr. Bright's face. I'm struggling to find the - - the document in the record. But as Your Honor may recall, I think it was yesterday, on January 21st, Mr. Holder, here we go, Mr. Holder sent Mr. Bright, and I think it's at Plaintiff's Exhibit 42 and 43. Mr. Holder literally went to the trouble of taking screenshots of the Maryland MPIA Manual and sending him - - sending them to Mr. Bright and saying, "Look, here's the

Blythe case. Here's the *City of Frederick versus Randall*. Here's Washington - - Washington Post. Here are the cases that you relied on. Here's the PIA manual you rely on. Let me help you. Let me circle - - let me circle the applicable provisions. Let me put boxes in red around it. I'm bringing this to your attention because this is the law. You're trampling on my rights." And what happened? We get a continued denial. Again, Your Honor, I can't imagine any other private citizen going to the efforts to work with the County in good faith to show them his position, to engage them in good faith. And - - and here we are arguing about it later.

Your Honor, one of the major contentions in this case is if we look past - - if we look past the defects with the def- the facial defects, the defects as a matter of law with respect to the Defendants' denial and all of, you know, all of those which are dispositive in - - in Mr. Holder's favor, the Defendants still should be held liable because producing the documents, which were contained in Plaintiff's Exhibit 7, could not interfere with any ongoing investigation. Okay? And much has been made of the record, much has been made of the record as to the - - the investigate- the merits, the bonafides of

the investigation that were going on that time. I'm not gonna walk Your Honor through each and every document in there because Your Honor has them. But let me just say this, Judge Michael in Plaintiff's Exhibit 7 was telling Christine Morral, and it's our contention, and I'll just paraphrase the document, that, "Here's the basic problem with the County's criminal case." And that's at Plaintiff's Exhibit 7, PIA 9. "There's a basic problem here." He's telling a private citizen, "I've got problems with the criminal case." Okay? And - - and they're going back and forth now. Mind you, Christine Morral, you know, wiretapped Mr. Holder. Mr. Holder filed charges. And, you know, Judge Michael prosecuted those charges. But he was communicating with her prior to that about - - about this case and the problem with it. Judge Michael was telling, openly telling Mr. Greivell, and the doc- the communications that are - - are in the record. They were having an exchange back and forth. Mr. Greivell was pointing out the fundamental flaws in the case, in the criminal case. He was pointing to, for example, the State's own expert that said, you know, "This - - this - - this alleged destruction happened not on the State's property. So are you gonna dismiss these? You don't have any probable

cause for these claims. You gonna dismiss them?" Judge Michael was telling Talley Kovacs, was telling Mary Ironside, "Here's the problem with the case, I can't prosecute Mr. Holder because he has claimed a superior right to the DNR to be on this land. And until you go to the Court and you quiet title or Mr. Holder quiet titles or somebody quite titles, my hands are tied. I'm not gonna devote any key resources of the State, of the County. I'm not gonna devote resources to this case if you're not - - if you, DNR, are not gonna get up and go file a quiet title action." They of course didn't do that. Instead, they wanted the case *nol-prossed* and they wanted to put it on the stet docket. It ultimately was *nol-prossed*. Judge Michael is literally telling everybody, everybody that, "I don't have a case." Yet these charges continued to be lorded over Mr. Holder.

You know, and - - and one, you know, it's - - it's incredible, one email - - one email was sent on October 14th. I believe, I'll turn to the timeline, I'll get it right here in my notes. Yeah, Plaintiff's Exhibit 9, this is an October 14th, 2020, communication from Judge Michael to Talley Kovacs. And he states that, "The - - the State will wait until the citations are set for trial. But given the DNR's

apparent lack of interest in this matter, additional charges are unlikely unless a different victim, who is more interested in its rights steps forward." This is at October 14th at 9:26 a. m. "Needless to say, this office won't be devoting any keen resources to a case that the DNR won't take to civil court." Judge Michael further notes, "Miss Ironside, if and when this matter goes to trial, please be ready to explain during your testimony why DNR feels that criminal charges are appropriate in the case where DNR cannot or will not exert its property rights in an equity court." That would be the Circuit Court. "The judge will want to know and understand that answer because it goes to the heart of the matter. It's a real head-scratcher." Your Honor, Judge Michael's own words indicate not only his lack of prosecution in this matter - - of this matter, but also the DNR's interest in lack of prosecuting the four tickets. He won't be devoting any keen resources. He notes the fatal flaw of his case. He notes that that goes to the, in his words, "The heart of the matter." You know, he - - he notes that correctly that if he would take the case to trial, which he had no interest of doing, the judge would be puzzled why DNR feels that criminal charges are appropriate in a case where the DNR cannot and

will not exert its property rights. This email is incredible because literally five and a half hours later, he sends an email to Mr. Bright after lecturing the DNR on the weakness of his case, he sends an email to Mr. Bright, and that's at Defendant's Exhibit 1, advising that, "Mr. Holder is under current criminal investigation and pending prosecution for activities related to these communications." It's incredible. I mean he's acknowledging all these - - all these flaws. He's telling everybody including Mr. Holder's own counsel, but we're to believe that the County had - - that the never told the County, "I can't prove this case?" We're to believe that the County didn't know? I mean Mr. Bright - - Mr. Bright received the documents at Plaintiff's Exhibit 7. He read them. He read - - he presumably read number 9 that said, "Here's the basic problem, I'm gonna charge - - I can't prove these claims. What I'm gonna do is, I'm gonna try to charge Mr. Holder with other crimes. That's what I'm gonna do." Your Honor, it's simply - - it's simply incredible. It's simply incredible to suggest that there was a valid and proper ongoing criminal investigation in this case.

Your - - Your Honor may have, you know, Your Honor may have wondered, "Why are we going to such great

extents and lengths to - - to talk about the deal that Mr. Holder entered into?" Well that - - that deal's important because on Jan- on July 14th, 2021, Mr. Holder entered into a plea deal for the nine criminal charges, four of which were the DNR charges, and five others that Mr. Estes had filed. The deal essentially was that Mr. Holder would plead to a lesser - - to a lesser disorderly conduct charge and that the other case - - the other cases would be *nol-prossed*. However, as - - as a part of that, as a part of the probation, he had to stay off of certain land. And he's claimed actual damages with respect to that. But that deal, the underpinnings of that deal and what led up to that deal is important because on July 14th, 2020, Mr. Holder's attorney at the time, Dave Harbin, asked the prosecutor, Kenny Shapiro, "Hey, do we have all the discovery in this case? Do we have all the discovery?" And he says, "Yes," and - - and provides - - provides Mr. Holder, he says, "Here - - here it goes. Here it is." He provides Mr. Holder with the discovery. And that's at Plaintiff's Exhibit 45. Your Honor, looking at Plaintiff's Exhibit 45, it's all related to the Ben Estes charges. There is no documents in there whatsoever related to the DNR charges. Why is that? Because the State wasn't

prosecuting it. They had no - - they had no interest in making their case. They couldn't make their case. They knew about that. They knew they couldn't.

Mr. Holder testified that, again, putting this in context, when Mr. Holder made this deal on July 15th, he didn't have - - he didn't have the Michael/Morral emails that are in Plaintiff's Exhibit 7. He didn't know they existed. So what did he do? He made it - - he made a plea deal without those - - without those documents. He pled guilty, an *Alford* plea of guilty. And only after, only after he made that plea, we came to court, we came to this court on July 21st before Judge Boyer. And during that argument that it was an oral argument on the Defendant's first motion for summary judgment, it was represented then that there are these emails out there between Christine Morral and Judge Michael. At that point, Mr. Holder said, you know, basically, "What emails? I'm - - I'm going to appeal that." And that's what he did on July 29th. Now interesting side note, in the Defendant's exhibit, I just want to point this out to Your Honor as a matter of timing, in Defendant's exhibit - - in Defendant's Exhibit 4, Judge Michael writes an email dated July 27th, Tuesday, July 27th, 2021. Judge Michael writes an email to Mr. Bright and Mr. Downey

and it's titled, "Hold the Phone." He writes that, Judge Michael writes, "Mr. Holder has appealed and all charges are going to be reinstated." Well that's interesting because Mr. Holder didn't appeal until two days later on the 29th. So that's just sort of an interesting, odd, interesting, odd note. I don't know how Judge Michael would have - - would have known two days in advance or why he would have said that Mr. Holder appealed, when later on in the - - in the documents, there's actually a Notice of Appeal in one of Plaintiff's Exhibits, and it's dated July 27th.

MR. HOLDER: 29th.

MR. WEDDLE: I'm sorry, thank you, July 29th. Thank you. All right, so let's fast-forward. Mr. Holder appeals. There was a motion to alter or amend, I'm sorry, the County lost its motion for summary judgment. There was a motion to alter or amend. And in came an Affidavit from the Defendants in - - in connection with that motion to alter or amend that stated there were 16 emails between - - between Judge Michael and Christine Morral. Of course those emails at the beginning of August when the motion to alter or amend was filed, I believe was filed on August 2nd, 2021. Those emails were not - - those emails were not produced at that time. On August 23rd, Your Honor

will note that the County provided a Bates labeled copy of the emails. I think that was, yes, that was at Defendant's Exhibit 9. No reason was given - - no reason was given why they were produced. The documents were produced despite the fact that Mr. Holder had appealed the charges, the charge of disorderly conduct. The documents were produced despite the fact the Mr. - - that Judge Michael testified, I believe he testified that the investigation is almost - - is still ongoing. It's never - - I think he said something to the effect that it's never ending and it's still ongoing. Which frankly, Your Honor, is absurd that he could - - that there could be an investigation of Mr. Holder when there are no - - when those criminal charges are now resolved. The County, after the production of these emails, the County moved, I think they filed a third motion for summary judgment in March of '22, arguing that because they produced these emails, this case is now moot or this count is now moot. Now that motion was of course denied, and the case of *Ireland versus Shearin* says that this case is not moot because the County decided produce.

Your Honor, Mr. Holder has pursued these documents in the public interest. It's in the public interest

to have an open and transparent government. He testified yesterday that he reports on these issues with local media, the Herald-Mail and private media outlets. Plaintiff's Exhibit 32 and 33 illustrate that Mr. Holder sent correspondence related to these counts, these four counts, the four Michael - -, I'm sorry, the four emails from Judge Michael to Mr. Bright. He sent correspondence related to those counts to Michael Lewis and Julie Greene of the Herald-Mail. Exhibit 32 and 33 indicates that Mr. Holder sent correspondence related to count four to Jeffrey Cline, who I understand to be a local politician. It's in the public interest to have clean water in the Town of Keedysville. It's certainly not in his private financial interest, and it is against every fiber in the tapestry of the MPIA to for someone to incur $90,000 in fees and costs in pursuit of documents, which should have been turned over in the first instance.

And one final - - one final point, and I - - I - - this - - I can't understate this enough, I believe Your Honor is gonna hear argument that it is not the Defendants' desire to frustrate Mr. Holder's efforts to obtain these documents at issue or any other documents. That suggestion simply belies reality.

The County counts PIA requests from no other person but Mr. Holder. The County has never filed a motion seeking to enjoin any other person other than Mr. Holder from making PIA requests, which are - - which is his right. The County has litigated this case, it's our contention, to the nth degree against Mr. Holder knowing it would drive up his costs, knowing it would drive up his costs that he has to pay my firm and - - and other litigation costs, fees and costs to suppress his ability to continue this case. The - - the County filed four dispositive motions. Your Honor, you're - - you're more seasoned than I. I, you know, I don't know that I've ever had a case, other than this one, where a party has filed four dispositive motions. The County, the facts show that the County has either commingled, lost or otherwise withheld documents which should have been produced as a matter of course.

And for these reasons, Your Honor, Mr. Holder requests that you award him statutory damages for the violations of counts one through four in the amount of $1,000. That this Court awards Mr. Holder actual damages that the Court considers appropriate - - appropriate since the Defendants knowingly and willfully failed to disclose or fully disclose a

public record that Mr. Holder was entitled to inspect under the PIA. And that and to order that Mr. Holder has substantially prevailed in this action, award him litigation costs and reasonable attorney's fees incurred in this action as set forth in - - in Plaintiff's trial Exhibit 50 and 51 as provided in - - in GP 4-362(g) and to grant any other relief that the Court deems appropriate.

THE COURT: Can you offer your assessment of the evidence and what Mr. Holder would have to prove to substantially prevail? And you may not be able to do that. That's kind of a vague phase. But perhaps you could offer some observation as to what line needs to be crossed to substantially prevail?

MR. WEDDLE: Well I think, well first off, with respect to - - with respect to count four, okay, we're gonna take that one because it's the easiest. We substantial- we had to have substantially prevailed because they produced the documents after we filed suit. With all due respect to Mr. Karpinski, and I'm not, you know, no - - no attacks on him, you know, the - - the suggestion that of - - of, you know, excusable neglect, it just - - that - - that can't - - we can't open that door, the Court can't open that door for - - for a litigant to come in and say, "Well I missed the

deadline, and you can't - - you can't find that Mr. Holder substantially prevailed."

THE COURT: Do you have a breakdown, let's go back to count four, do you have a breakdown as to what attorney's fees were incurred up to the point of receiving the documents? And maybe you can just do it by virtue of date…

MR. WEDDLE: So…

THE COURT: …dates received and…

MR. WEDDLE: Yeah, so I would say, Your Honor, I didn't specifically itemize that for Your Honor in preparing the summary. But, you know, I would say certainly any fees after August 4th, 2022, those fees, and I apologize, I did not calculate those in Plaintiff's Exhibit - - they were not calculated broken down in that manner on Plaintiff's Exhibit 51. But the fee - - the invoices for the various months are included at Plaintiff's Exhibit 50. So I would say - - I would say fees after August 4th, 2022, when the documents were received. The - - the term, let me see, I want to go to your substantial prevailing argument. It appears that the *Kline versus Fuller* case suggests that or states that although an actual judgment in claimant's favor is not required, it must be demonstrated that pros- that prosecution of the

lawsuit could reasonably be regarded as having been necessary in order to gain release of the information and that there was a causal nexus between the prosecution of the suit and the agency's surrender of the requested information. It's not necessary for the litigant to recover all the documents at issue but rather key documents. And I think that's the - - that's the law on - - that's the law as cited in *Kline versus Fuller* on the issue of substantial - - of what it means to substantially prevail. And it's our contention that - - it's - - and I can cite other federal cases if Your Honor desires, but that is the Maryland authority of *Kline versus Fuller*. It's our contention that, you know, obviously the - - the suit essentially was the - - the lever that released the documents because we didn't get them in March, and we didn't get them in June or in June and July. We only got them after suit was filed.

THE COURT: Do you have any other benchmarks on any of the other counts?

MR. WEDDLE: Well…

THE COURT: I realize you may not consider the dates that we're talking about as benchmarks, but for the sake of my inquiry, do you have any other similar benchmarks on the other counts?

MR. WEDDLE: So with respect to count one, you know, they're - - they're sort of a - - they're sort of a demarcation. The documents were produced on - - the documents were produced on August 23rd, 2021. So certainly, I think, any fees prior to that and - - and those documents were produced, any fees prior to - - from the time of filing suit to certainly that - - that period of time would be certainly fair game. So from, I think - - I think the first fees were - - were incurred in February. The documents came out after - - after a dispositive motion and after a - - a motion to alter or amend was filed by the Defendants and briefed, then the documents were produced. And - - and frankly, Your Honor, you know, we, like I said, we - - we never - - we were not told why - - why now? You know, why now? Because the appeal was still pending. The motion to alter or amend was still pending. Now the Defendants had lost the motion for summary judgment. So I would take the position that well they were gonna roll the dice and see. You know, if the motion for summary judgment was granted, I would take the position that the Defendants weren't gonna produce the documents because the case would have been over. But certainly, I think certainly count one, it's fair game from between February of

2021 and really into March of 2021 as - - as the first invoice of Plaintiff's Exhibit 50 shows through certainly August of 2021.

Obviously with respect to counts two and three, we didn't get those documents. So that's kind of a tougher question, I think, in my mind to put a precise date on.

THE COURT: Okay. All done?

MR. WEDDLE: Yes. Do you have any further questions, Your Honor?

THE COURT: I do not at this point. Why don't we take a short break, a breather, not too long. I will tell court staff we're - - we may get into lunch a bit. I've got a really hard stop point at 1 o'clock, and I don't want to break up the closing arguments. So I hate to interfere with things so. Okay, thanks.

MR. WEDDLE: Thank you.

THE COURT: We'll get going.

(Whereupon this matter went into recess from 11:14 a. m. until 11:28 a. m.)

THE COURT: Please have a seat. We're back on the record in the matter of Holder. And, Mr. Karpinski, I believe you're up on closing.

MR. KARPINSKI: Thank you, Your Honor. I preliminarily want to thank the Court and staff for

all the hard work and time that has been put into this case. It's deeply appreciated by Mr. Downey, Mr. Bright and the County. I want to put a little perspective on sort of the timeline of events here, Your Honor. The original Complaint filed in this case was on March 15 of 2021. And that Complaint contained one count, and that count was whether the denials by Mr. Bright of August and of October of 2020 were proper. That was the only count that was in this case.

THE COURT: August and what?

MR. KARPINSKI: What's that?

THE COURT: August and what? I mean I know it's in the original Complaint.

MR. KARPINSKI: It was, yeah, it's August - - August 2020 and October of 2020. That was the only count that was at issue in this case. We know that the records that were the subject of that count were produced in August of 2020. So how in the world are we still here? Well we're still here not because as Mr. Holder suggested the County has tried to bulldog him into doing anything. The County has never had any interest in these records. The County was doing what it's required to do under the law, which is to go ahead and respect another agency of state government

that did not want these records produced. But to sit here and suggest that the County has been the one who has continued to facilitate and fester this litigation, the County hopefully thought this case was resolved when it produced the records that Mr. Holder asked for after Mr. Michael said, "Mr. Downey, you make a decision as to whether these records -," the Amended Complaint that was filed in this case, which Plaintiff says, "Well I had to file count four because of the Amended Complaint." Actually, the Amended Complaint in this case added counts two, three and four. And it added them in August of 2022. So literally a year after Judge Michael had said, "Mr. Downey, you make a decision on whether these records should be produced," and we produced them. So this case for literally a year was, quite frankly, about nothing because we had already produced everything. But the case continued on. And so I'd respectfully submit any suggestion that the County has tried to go ahead and do anything to go ahead and thwart Mr. Holder's rights is just simply baseless, just simply baseless. The County has attempted to address a multitude of Mr. Holder's MPIA requests, and they attempted to do so in this - - in this particular matter as well.

So let's talk about the standard.

THE COURT: Could you before you go there go back to the counts two, three and four and your particular concerns about those or responses to those requests?

MR. KARPINSKI: Well I'm just saying that the - - the counts two, three and four weren't added in this case, Your Honor, until August of 2022.

THE COURT: Right.

MR. KARPINSKI: Which the original Complaint only addressed the emails…

THE COURT: I realize that but…

MR. KARPINSKI: …in…

THE COURT: …I mean let's say, you know, lawsuits are filed or amended all the time, and it doesn't mean with the long delay from the original filing that *ipso facto* those late filings are not of value or don't have merit.

MR. KARPINSKI: Well I - - I would - - I - - I would not disagree with that, Your Honor. What I'm saying though is Mr. Weddle made an impassioned plea that the County has been trying to go ahead and drive this litigation. The County had really no interest in the original documents that were at issue. And, quite frankly, were - - was hopeful this litigation would have come to an end when the documents got produced.

So let me start with sort of the standard, the Court must…

THE COURT: Tell me on two, three and four, remind me when such documents were produced.

MR. KARPINSKI: For two, three and four?

THE COURT: Yeah. And I know it's been presented, but I just…

MR. KARPINSKI: Well for two, two was provi- there were - - there were produced, Exhibit - - on count two relates to the commingled document regarding with the Sheriff's Office.

THE COURT: Right.

MR. KARPINSKI: Okay? And that was produced on - - in August of 2021. So in connection with the 16 Joseph Michael, Judge Michael, emails with Morral, that Sheriff's Office email, which Mr. Holder already had, was also included in the stack that was presented to Mr. Holder. So he already had it. He had it before he filed the Amended Complaint.

With regard to count three, involving Barry Levey, we just don't have the document, Your Honor. We just don't have the document.

And then with regard to count four, which Plaintiff says, "Well we had to file because we couldn't get any response," this case was already

pending. Basically, this was to use the MPIA as subterfuge to go ahead and get around the litigation. If I hadn't produced a document in connection with this litigation that was relevant, the appropriate way to address that would have been to file a motion to compel or bring it to my attention and go ahead and have the Court go ahead and address it. But the MPIA is not intended to be an end-around against the legal system when pending cases are - - are at issue. And quite frankly, you know, one of my major issues with all this is as a government entity, the County's required to go ahead and continue to address Mr. Holder's MPIA request on the one hand. And on the other hand, they sit as Respondents and Defendants in cases involving some of Mr. Holder's other MPIA cases.

So the Court must decide whether to award actual damages and statutory damages against a government unit if it finds that the Defendant knowingly and willfully failed to disclose a public record.

Let me start with the two other Respondents in this case, Mr. Downey and Mr. Bright. The statute addresses when a custodian can be held liable for temporary denials. But this case doesn't involve a temporary denial. And I'd respectfully submit that on that basis alone, Mr. Downey and Mr. Bright should be

dismissed. First of all, Mr. Bright's not the custodian of records for Washington County. Mr. Downey, quite frankly, had very little involvement with this to begin with at all. Really if the case rises or falls, it should be against the Board of County Commissioners. And let me express why I think the claim fails against the Board of County Commissioners on the merits. Your Honor, we submitted as an exhibit an excerpt from the MPIA that talks about that if one agency would deny a record and that it's in the possession of another agency, that agency properly and permissibly denies the record at issue. Okay? And that's the way it has to be, Your Honor, because when you think about it, if you take Mr. Holder's argument to its extreme, Mr. Downey as the custodian of records for Washington County is now responsible for every agency that is on the County's email server. And that would require the State's Attorney's Office in terms of *Brady* material. It would include the Sheriff's Office in terms of not complying with various constitutional rights. The law cannot possibly be, cannot possibly be that the custodian of records for Washington County is now responsible for every error and omission to the extent there is an error or omission by a state agency. And

that's in essence that's what Mr. Holder is saying here is, which is, "Washington County, you're responsible because we think Judge Michael screwed this up, and he didn't do it right. And he didn't review things, and he didn't go ahead and do what should have been done." But I respectfully submit, Your Honor, that's not the law. The law is is that Washington County, when it gets documents that would be within the possession of the State's Attorney's Office would go ahead and should go ahead and defer to and consult with the State's Attorney's Office to decide whether the record should be released. So in this particular case, that's exactly what Mr. Bright did. He had a search done by Josh O'Neal. The results came back. He consults with the State's Attorney. The State's Attorney says they're involving investigations in criminal proceedings. And I understand what Mr. Weddle was saying, "Well it didn't involve this and it didn't involve that." Judge Michael said there were lots of things going on and there were lots of investigations going on, and there were criminal proceedings that were going on. Now in reality does the State's Attorney share with the County Attorney what those investigations are, where they are in the investigations, what their theory is

involving that? Of course they don't. They never do that. So Mr. - - what Mr. Bright did was the appropriate thing, which is, "Here you go, Judge Michael. Do you want these released or not?" And to give you an idea of whether there was a willful refusal to disclose the records, all you have to do is look at Mr. Bright's email to Judge Michael where he says, "Unless you think they involve some investigation that's going on, I think they should be produced. Please let me have your thoughts." And Judge Michael's response is, "They involve investigations. They involve criminal proceedings." And all Mr. Bright did was comply with what the Deputy State's Attorney asked him to do. That's it. At the end of the day, that's all he did.

And this - - this stuff yesterday about, "Well I, you know, I thought Mr. - - Mr. Bright was, you know, he was the person to deal with and not Judge Michael," I mean, Your Honor, you've been around a long time. You're a very experienced judge. You can judge the credibility of that. Mr. Holder is not a shrinking violet in any respect. If he had a problem with Judge Michael or he had a problem with the State's Attorney's Office, then he should have brought that up with the State's Attorney's Office. It's not as if -

- it is not as if there was some sort of - - sort of hide and seek situation, which just says, "Your request is denied due to an investigation." The letter that was sent to Mr. Holder was very precise that, "Based upon the advice of the State's Attorney's Office, there are ongoing investigations in criminal proceedings and, therefore, your request is denied." So it's not as if Mr. Bright held, you know, was hiding the ball about what was the source of the information, what was going on. He said it was the State's Attorney. He said, "That's what the State's Attorney's Office has told me. Therefore, I must deny it." So there obviously was a reference for - - there was a way for Mr. Holder to seek recourse.

And, again, a lot of this testimony, Your Honor, involved DNR and the status of the DNR cases. I respectfully submit, all that's a red herring because the exemption says it's either an investigation or criminal prosecution. And what Judge Michael testified to was it was both. "I knew there were these DNR citations going on. I knew there were these issues going on with Ms. Morral. I knew all these things were going on." So there was a whole confluence of things that were happening. And again, not to belabor the obvious, which is the State's

Attorney's Office is not gonna provide all the particulars of that. Nor is it, quite frankly, appropriate to hold the County responsible to sit there and say, "Okay, Mr. State's Attorney, you tell me exactly what this email will do to aid or assist you in your investigation." That would be incredible, Your Honor, for there to be that sort of authority imposed upon or given to the County Attorney's Office to go ahead and dictate to the State's Attorney's Office and to the Sheriff just because they're on a -- they - - they're on a county email server for probably administrative costs that the County Attorney's Office would have the ability to do go ahead and do that. So obviously I respectfully submit Mr. Bright did exactly what was supposed to be done. The August 4 letter, it's Plaintiff's Exhibit 24, clearly sets out the reason for the denial. Mr. Holder could have easily have gone to the State's Attorney's Office if he wished to get more information. He could have filed a request with the -- the State's Attorney's Office. He could have done a number of things. He didn't do those things for whatever reason. Mr. Holder testified, you know, he seen Judge Michael at various events at sounded like a campaign thing, at a brewery. I mean it's not like

there was some inability for Mr. Holder to get additional information. I don't know if the State's Attorney's Office would have shared it with him, but there certainly was no problem or inability for him to go ahead and do that.

And with regard to the October 14, 2020, request, it was in essence the same response. And Mr. Bright followed the same process, which I don't - - I respectfully submit cannot be faulted or flawed. I mean he went back to the State's Attorney, and he went ahead and confirmed that this investigation was ongoing as he did again in January of 2021.

Mr. Weddle has come up with this theory, which is - - is just a theory. It's not grounded in evidence. It's not grounded in fact that the County's motivation to go ahead and produce these records was as a result of losing on a motion for summary judgment because the Affidavit wasn't in the correct form during COVID. And I know Your Honor, I'm sure, will study the file in great detail. The absolute motivation for going ahead and producing these records was that as of August 12, Judge Michael specifically defers to the County Attorney. He says, "I'm referring you to Kirk Downey, Kevin Karpinski, and they'll address your issues. At that point, there doesn't seem to be any

indication from Judge Michael that he is interposing an objection to these records being produced. And, therefore - - therefore, they're promptly produced thereafter. And that includes the email that is the subject of count two, which is the email from Keedysville, from Morral to Keedysville just happens to copy the Sheriff on it and really has nothing to do with county government at all. It's got nothing to do with county business. It has everything to do with the same thing that Ms. Morral had been complaining about before. "Mr. Holder's tearing down my fence. Mr. Holder is threatening me. Mr. Holder's doing all these things." And so that email either it got commingled or there was some issue in terms of how it was searched. But for whatever - - whatever reason when the County was given the opportunity to produce that - - those records because Judge Michael no longer had an objection to it, it was produced.

And no good deed goes unpunished because then in January of 2022, Mr. Holder adds count two and says, "Well by the way, you should have produced this record earlier," not withstanding the fact that as of August of 2021, he had the record. And I should also note, he had the record from the Town of Keedysville. I mean this is the - - this is the quintessential gotcha

game, which is, "I'm gonna inundate everyone with so many MPIA requests that no one's gonna be able to follow them, no one's gonna be able to keep track. I've got records from here. I've got records from there." It's a game, Your Honor. And I don't dispute that anyone has the right to file MPIA requests. Just like I don't dispute that people have the right to file complaints, lawsuits. But there has to be some reasonable bounds put on some of this. And I don't think the MPIA is intended to be a sort of gotcha, "I went ahead and I figured out how I can go ahead and get the government to make a mistake." And that's certainly not willful or wanton in any respect.

So with regard to the records that were produced in August of 2021, those were produced because the State evidently no longer had an objection. Now Mr. Weddle said, "Well there was no effort to segregate or redact or any -," how - - how would the County do that? The County did - - the County has no ability to go ahead and determine what investigation the State's Attorney's Office is doing. They have no ability to go ahead and look at any of that. The County only has the ability to go ahead and rely upon what's being told to them in the representations by Assistant State's - - Deputy State's Attorney Michael about

these things are going on and that he does not wish to have these records produced.

So this whole idea that there can be severability, how would the County do any of that? The County has to rely upon what the State's Attorney's Office is telling them with regard to the records that are at issue. And I understand Mr. Weddle said, "Well and these records just came out of the blue." But that's - - that's contrary to what Mr. Holder basically said in his August 23, 2021, email, where he wrote, "Mr. Karpinski, thank you very much for fulfilling my request. I just want to add that you missed a few. On June 2, 2020, the address blevey@washco-md.net was forwarded emails from townhall@keedysville.md that originated from Morral7@msn on May 29, 2020." Now how does he know that? Because he already has the email. He has the email that is at issue. So this is, again, you should have this email. But he knew exactly what I was producing, and he knew why I was producing it. And those records were produced. So as to count one, there was no - - no actions by the County where it knowingly and willfully failed to disclose a public record. As far as the County knew, these weren't public records. They were subject to an exemption. And I understand Mr. Weddle said, "Well they didn't

use the magic words referencing this specific statutory section, subsection." But they did - - the letters both use the magical words, "Impending investigation," and, "Criminal investigation."

Now, Your Honor, Mr. Weddle cited to you some authority. And I want to - - to go ahead and tell you what I think is really the relevant authority. First of all, *Blythe versus State* is not relevant. *Blythe versus State* involved a closed criminal investigation. It was not a pending matter. So he asked for that file six and a half years after the file had been closed and the court said that was something that where a denial would not be appropriate. *Fioretti versus Maryland State Board of Dental Examiners*, that involves the - - the authority of the Board - - the Board of Dental Examiners. It has nothing to do with a law enforcement agency. That case has no relevance. The cases that have relevance, Your Honor, are *Faulk* - - *Faulk versus State's Attorney for Harford County*, 299 Maryland 474. And in that case, the Court went ahead, and I'm gonna quote from the - - the decision because it addressed whether when there is a pending investigation, pending investigation, it said, "There is nothing in the language or the legislative history to indicate that the General Assembly intended to

require a case by case showing that disclosure would reveal the State's case prematurely result in delay or otherwise create a demonstrable interference with a particular case. And that generic determination of interference could never be made. Thus, we conclude the General Assembly did not intend to preclude general determinations of interference with the circumstances where such that the disclosure of the requested materials necessarily, quote, 'Would interfere with law enforcement proceedings.' The State is not required to make a particularized showing that the disclosure of investigatory police reports compiled for law enforcement purposes to a defendant in a pending criminal proceeding would interfere with that pending proceeding. Rather a generic determination of interference can be made whenever a defendant in the criminal proceeding seeks access to an investigatory police report relating to a pending criminal proceeding." And, quite frankly, in *the City of Frederick versus Randall* case at 154 Maryland App. 543, the Court held the exact same thing, holding that, quote, "In cases where defendants are awaiting trial or whether criminal investigations are ongoing, the reason why it is in the public interest to withhold the contents of the investigatory file is

obvious. I. e., disclosure almost always will, quote, 'Interfere with law enforcement proceedings.'" And I respectfully submit, Your Honor, that the *Faulk* case and the *Randall* case are the two cases that are on point here. They're cases that Mr. Bright actually said he referred to and referenced in connection with this matter. And that is what I think is the controlling authority.

Now there was a lot of testimony, Your Honor, and I think it is important, and I'm going to re-emphasize it here, which is I think it's important for Your Honor to consider what the County knew. Mr. Weddle spent a lot of time talking about what everyone else knew, what the State's Attorney's Office knew, what Mr. Greivell knew, what DNR knew, what all these other entities that, quite frankly, are part of the prosecutorial arm of government. But, Your Honor, you'll go through all those exhibits, and you will search in vain for any indication, any indication that Mr. Michael's representations to Mr. Bright were in bad faith. You will - - you will search in vain for any evidence whatsoever that there was any information provided to the County, County Attorney's Office or the County that Mr. Michael's representations that there were ongoing investigations in criminal

proceedings was false, bogus, made in bad faith. There is simply no evidence of that whatsoever. So while all these exhibits exist regarding conversations that Mr. - - Judge Michael was having with DNR and with others, they have nothing to do with whether the County can be held liable in this case. Moreover, the focus on these DNR case - - cases or claims have been a red herring because what Judge Michael testified to was, and it's borne out by all the other exhibits, is that there were investigations going on about Mr. Estes, Mr. Young, Mr. - - Ms. Morral, half of Keedysville. There were concerns that Mr. Holder had with Keedysville, Sharpsburg, almost every other jurisdiction up here in Washington County. And he was evaluating all of them. So in terms of focusing in on the DNR charges, I respectfully submit, that is not the correct focus.

Mr. Holder's count two is the June 20, 2020, email from Christine Morral to the Town of Keedysville with a carbon copy to Sheriff Mullendore. Again, it's a state elected official, and it certainly was not willfully withheld. And, quite frankly, by the time it was added as count two to the Amended Complaint, that record had already been produced by the County. So it was already in the Plaintiff's possession by the

time that occurred. We provided that record on August 23. And, Your Honor, whether Mr. Bright had it, didn't have it, really what's the difference? It - - it clearly reiterates already what Judge Michael was saying, which was when you look at it, and it's the very first document we produced, Plaintiff's - - Petitioner's Exhibit 7, it involves threats by Justin Holder against Ms. Morral. And so whether Judge Michael saw it, whether it was inadvertently missed, it certainly was not willfully or wantonly withheld. And the frustrating thing, Your Honor, is - - is that it was a document Mr. Holder already had because he had already gotten it from the Town of Keedysville. So there was no intent by the County to take any actions to willfully withhold the document.

Now with regard to count three, which is the Barry Levey email, let me just say this, Mr. Holder filed a request in June 23, 2020, the heart of COVID. He sends in a request, and he wants June 15th, 2020, he wants all of Barry Levey's emails for the last three years. Barry Levey is an employee of the Sheriff's Office. The County doesn't have any control over Barry Levey. But my point here, Your Honor, is Mr. Holder is told 45,239 emails exist. Now Mr. Bright's not gonna go through 45,000 emails, not unless someone

goes ahead and sends him a deposit and tells him that he's, you know, obligated to go ahead and go through these and determine whether there are any privileges asserted. I don't think Mr. O'Neal testified as Mr. Weddle said that he sent all of the emails to Mr. Bright. I think what he said was that would be his normal practice, and he would certainly normally do that. But when he was presented with an exhibit where he went ahead and showed - - sent an email to Ms. McCarty and to Mr. Bright regarding the results of the search, he said, "I - - I don't see anything here where I have a link that said that I actually sent the records." But again, that too is a red herring. Who's gonna go look through 45,000 emails unless someone gives him some indication that there's a reason to look through 45,000 emails? So that is not a basis for anything. And that is just another distraction from really the issues in this case.

Which leads to the next distraction, which is - - is preservation of rights letter that was prepared and sent to Mr. Downey on December 23, 2020, and it's Exhibit 3. Your Honor, I strongly encourage you to take another look at it. I know you were reading it, but reading it as you're listening to testimony. This preservation of rights letter is so vague. It is so

ambiguous that I don't know what's to be preserved. Basically what Mr. Holder is saying is, "By the way, as it relates to me, you are to preserve everything in perpetuity from every MPIA request, everything that I've ever asked for from the County." I don't even see a reference to Barry Levey in this. I don't see anything. It's basically, "Don't destroy anything that relates to me." Now Your Honor was in private practice for a long time, been on the bench for a long time, that's not a proper preservation of rights letter. Mr. Holder does not get to dictate that every agency within County government is going to go ahead and hold in perpetuity everything that involves him. So the preservation of rights letter, again, that's just a red herring in this matter.

So then we get to Barry Levey and his email. Okay, Mr. Holder sends a request on August 30, 2021. And he wants - - he wants all the emails for Barry Levey on June 2 of 2020. Okay? The County's Director of IT Systems conducts a search. And this is Exhibit 4. The County doesn't have any emails. They don't have any responsive emails. Now whether Mr. Levey deleted it, I don't know when Mr. Levey deleted it. It's obvious that Mr. Levey and Mr. Holder don't like one another. It certainly not - - has anything to do

with Wash- Washington County has no motivation to go ahead and delete anything. It's not even an email that involves Washington County. It's an email from Ms. Morral to Keedysville, which is carbon copied to all the elective officials in Keedysville. Okay? Mr. Levey went ahead and said, "I got rid of it. I deleted it." Maybe it's because he doesn't like Mr. Holder or maybe it's because his - - his normal practice of deleting things. Maybe he doesn't want something involving Keedysville to be on his - - on his Washington Sheriff's account. I don't know why he did it. But I don't how much more the County is supposed to do. The County did exactly what it's supposed to do, which is it went ahead and it looked through, did the search, and he couldn't find any emails that were responsive to the request.

Which gets us to count four, which is the, excuse me, Your Honor. Gets us to count four, which involves the exchange between the State's Attorney's Office and Mr. Bright. And frankly, this probably should have been resolved as a discovery dispute in the case. And it's now turned into a MPIA request, which I respectfully submit is - - is an end-around about the proper way to go ahead and address litigation. But on June 30, first of all, Mr. - - Mr. Holder cannot say

there was no response. The response initially was, "The documents are protected by attorney-client privilege. We're not gonna produce. They're protected by work product. We're not gonna produce them." Okay? There's this interactive process or iterative process that was ongoing between Mr. Holder and my office. And by June 30, which is - - that's the date that Mr. Holder has in his Complaint, his Amended Complaint, as the date. He says, "I submitted something on June 30, June 30 request, and I didn't get the documents." But the testimony is, is that as of August 4, he got the documents. Now I respectfully submit, he didn't need to file suit to do that. He would have gotten them. And it was simply an administrative oversight in my office, and we missed the deadline by a few days. But again, Your Honor, this is part of the gotcha game, which is, you know, "I'm gonna inundate you with so much paperwork," that, you know, Mr. Downey would need to go ahead and hire someone to go ahead and just deal with Mr. Holder's lawsuits and his MPIA requests. And so is everything perfect? No. Is it a willful and wanton situation? No, it's not. For the most part, the County has tried to do everything to go ahead and comply with Mr. Holder's requests. Mr. Weddle was aware that I was at

the time involved in post-election activities. And you heard today from Mr. Bright, he was deposed September 26, and the reality is, quite frankly, he was questioned extensively about those emails in connection with this case. There's absolutely no prejudice whatsoever with regard to the timing of when those documents were produced.

I want to talk about Mr. Weddle talked about the public interest. Mr. Holder is on a campaign, his own campaign, that's separate and apart from a public interest campaign. He's on his own campaign to figure out property disputes with his neighbors, water and sewer issues. There is no great public interest in what Mr. Holder is doing. Mr. Holder is doing this for himself. He talked about how he's talked about newspaper reporters. I - - there's nothing produced in this trial that any reporter has relied upon anything that Mr. Holder has produced in connection with his research to bolster the public interest in this case in matters involving things around Washington County. Respectfully, and I, and Mr. Holder was correct when he said Mr. Holder and I have had a good relationship. But, respectfully, but what Mr. Holder has done, he has burdened the system by submitting voluminous emails to the County, to

Keedysville, to DNR, to other jurisdictions. It has not been in the public interest. In fact, I think it's been respectfully contrary to the public interest for the amount of resources that have been expended to go ahead and address all of Mr. Holder's MPIA requests.

Your Honor, I would respectfully submit when you look at counts one, two, three and four, count one, there was a valid reason to withhold the records based upon the State's Attorney's Office until the State's Attorney's Office said, "It's your call," and the records were produced.

Count two, by the time the Amended Complaint was filed in this case, that record had already been produced. It was the first - - the first document we produced back in August of 2021. It certainly wasn't willfully withheld.

As to count three, Mr. O'Neal, Mr. Levey's email, we can only do what we can do, which is search the system and no email exists for June 2 of 2020. An email that Mr. Holder by his own admission testified to was already within his possession.

And with regard to count four, with regard to the documents between the State's Attorney's Office, that was an inadvertent error. That was certainly not a

willful or wanton refusal to produce the documents. If a few days delay would serve as the basis for an award of statutory and actual damages and attorney's fees, our courts would be inundated with MPIA cases. The law has to have some room to allow for the fact that there are mistakes, there are errors that are made. They are unintentional. They're not malicious. They certainly were not malicious towards Mr. Holder in any respect. And given the volume of MPIA requests that had been filed and answered, I think respectfully the County has acted in good faith with regard to all of his MPIA claims and certainly the causes of action at issue in this case.

So I would respectfully submit, Your Honor, that Plaintiff - - Petitioner's failed to meet their burden that there was knowing and willful refusal to produce the records and that the Plaintiff has substantially prevailed. And on that basis alone, the Court should find in favor of the Respondents.

If the Court reaches the question of attorney's fees, I would just point out that the Court is required to look at the benefit the public derived from the lawsuit, the nature of the applicant's interest in the released records and whether the agency's withholding of the information had a

reasonable basis. And it's solely in Your Honor's discretion. But with regard to the - - what was the beginning of this case, whether there was a reasonable basis to withhold the records, how could there not have been? The State's Attorney's Office was saying, "We don't want you to reduce - - produce these records. They're part of an investigation. They're part - - they're part of an ongoing criminal proceedings."

I'd respectfully submit that notwithstanding Mr. Holder's suggestion that he is undertaking this for the benefit of the public, there's no evidence that there has been any benefit to the public. The applicant's nature - - the nature of the applicant's nature interest in the released information, well that's - - that is Mr. Holder. Mr. Holder is, you know, he - - he wants to go ahead and pursue getting information, and he's gonna continue to pursue information. I would respectfully submit, Your Honor, that this is the type of case where it would be a very big mistake to reward someone who has continued to go ahead and file MPIA requests by going ahead and awarding attorney's fees, where they have overburdened the system in the first place. But I respectfully submit, Your Honor, you don't even get to the issue of

attorney's fees because there has not been a willful withholding. Plaintiff has - - Petitioner has not substantially prevailed, and I would respectfully submit that the Court should find in favor of Respondents. And unless the Court has any questions, I will submit.

THE COURT: Thank you. Thanks, Mr. Karpinski. Do you have any rebuttal argument, Mr. Weddle?

MR. WEDDLE: Yes, Your Honor. And I'll try to be as brief as possible.

THE COURT: And let me say just because of the burden issue here, Mr. Karpinksi will have an opportunity for rebuttal, strictly rebuttal, not new argument.

MR. WEDDLE: To address the argument this would be a big mistake to award attorney's fees to Mr. Holder, what recourse does he have? I mean what recourse does he have other than to - - to seek his attorney's fees in the face of wrongful denials? If - - if - - if the…

THE COURT: Well what about - - what about the - - at least implicit argument that he received the documents that were allegedly available, did not get documents that were allegedly not available? Why would a reasonable person not conclude that you hang

up your boots on that in pursuing the litigation and incurring additional attorney's fees?

MR. WEDDLE: Because you're - - if you're in for a penny, you're in for a pound. You know…

THE COURT: A lot of risk.

MR. WEDDLE: I'm sorry?

THE COURT: You're in for a pound on your - - on your risk.

MR. WEDDLE: Well, you know, he's come this far. Right? How can - - does he turn around now? In other words, you know, let's say the - - let's say the County makes him incur $45,000 in fees to get, I don't know, documents that were produced five and a half months after the litigation. Does he just take that loss and go home? Or does he show that he substantially prevailed and get - - and recover some of those fees? I mean I think - - I think that's a complete deprivation of his rights to say, "Okay, County, you - - you can breathe life into this claim by withholding the documents." That conduct gives rise to a claim. And then you can also kill the claim by producing the documents. And when you kill the claim by - - when you kill the claim by producing the documents, guess what? Mr. Holder has no - - no further rights. So you're - - you're the - - you're

the - - you are the genesis of the claim, you're the arbiter of the claim. I mean you - - you cannot - - the County cannot decide when it can commit misconduct and then cut off Mr. Holder's damages when it decides to produce documents. And - - and thank you for raising the point on producing documents. And I want to refer to my notes here. Again, the - - count one, the count one documents, we didn't get those until five and a half months until August 23rd. So I think it was five and a half months after litigation.

There was a suggestion that count three, Mr. Holder, the Levey email, Mr. Holder had the document. Mr. Holder had the document. Well, no, he didn't have the document when he - - when he made his request on June 15th, 2020, for all of Barry Levey's emails. And he certainly did not have the - - the full document. He did not have the full document when he subsequently sought in 2021, I think it was August of 2021, to get the document from the County. Mr. Holder testified that he had - - he received the text of the email from the Town of Keedysville. But he was not able to receive the attachments. So, no, he did not have - - he did not have the documents when he made the request, which is why he sought them.

Count two, yes, he received eventually count two,

the Morral/Town of Keedysville email from other sources. But he should have got it sooner, much sooner. He asked for it in August of 2020. He asked for it in October of 2020. He asked for it in January 20 of 2021. He didn't get it, I believe, until June of, I think he had the document as of June 26, 2021. So he didn't get that document. He didn't have that document. He was precluded from using that document for that period of time.

And count four, Your Honor, quite frankly, let me switch gears to count four. The suggestion has been count four should have been resolved as a discovery dispute. Well, Your Honor, I mean perhaps. But in this case, if you look at the docket, the discovery disputes were thus, Mr. Holder filed a request for the production of documents. None came. Mr. Holder, a motion for protective order came, various motions to quash were filed, motions to compel were filed trying to extract the discovery from the Defendants that now the Defendants are saying, "Oh, well it should have been resolved in the normal course of discovery." That is simply not supported by the procedural posture of this case. They - - the Defendants did everything they could to preclude discovery. They didn't answer the request for production of documents. They didn't

answer the interrogatories until they - - we moved to compel. We tried to depose Barry Levey. We tried to depose Josh O'Neal. We tried to depose Mr. Bright. We tried to depose Mr. Downey. And that was met with a motion for protective order and to quash those subpoenas, which this Court only allowed us to pro- to depose Mr. Bright. So to sit here and suggest that Mr. Holder's recourse was to get these documents in discovery is just - - it's just - - it's silly, Your Honor. The fact of the matter is we knew about these Michael/Bright emails because they were in the answers to interrogatories. Well they should have been gotten in discovery. Answers to interrogatories are discovery. So why weren't they produced with the answers to interrogatories? This whole discovery argument is a complete red herring. Again, Mr. Holder worked with the County on this before filing suit. He made a May 7th request. Yes, the County responded to that. We don't deny that. It's in the record. What we - - what we take issue with is the County's denial on the basis of some sort of attorney-client privilege or work product. Now we take dispute with that because in their answers to interrogatories that they actually gave us after we moved to compel them, they said, "None of these documents are privileged." So

that response, that basis is bogus. Mr. Holder kindly said, "Look, fellows, you said they're not privileged. I'd like them now. Please give them." That was - - that was June 16th. They didn't come. Mr. Holder said, again, on June 30th, "Please give them to me. They're not privileged." They didn't come. They didn't come within ten days. They didn't come immediately, and they didn't come in 30 days. So what is he to do? He files suit. That's the only - - that's the only lever he had in this case. We had an ongoing suit. And there was an amendment of deadline right on August 1st, so he added the claim.

Turning to *Faulk*, I'm sorry, turning to count one, there was categorically no effort in this case to redact or sever documents. That's the custodian's duty. And I believe the question was posed, "What is - - what is the County supposed to do?" Well simply put, the County could have asked Judge Michael, Judge Michael at the time, "Hey, we have a duty to sever, we have a duty to redact. Is there anything in here? How can we sever or redact these documents, take out information in Plaintiff's Exhibit 7 that would not, assuming for the sake of argument that there was an ongoing investigation that would not pre- that would not prejudice the ongoing investigation?" It's not

like these Morral/Michael emails were between some sort of confidential informant. I mean Judge Michael, the - - the fact that - - it's not like he couldn't have released them because that would have, you know, impaired the investigation. She's the one who wiretapped Mr. Holder. She's the one who complained about him. But if you just, Your Honor, I implore you, just if you haven't done so, just take a look at Plaintiff's Exhibit 7. I mean why couldn't these documents be redacted? Why, for example, is Mr. Holder's deed that he's relying upon, why is that - - why couldn't that be produced? Why couldn't emails about title insurance be produced? Why couldn't emails where Judge Michael was giving her civil advice telling her to go invoke her title insurance, how does that relate to an ongoing investigation? I mean and that's putting aside his - - his admoni-, you know, his admissions to her that, you know, "Here's the problem with this case." How could his advice to her that, "Hey, you need to go quiet title. You need to go file something. Go to the Circuit Court and quiet title so that if it - - if it comes back to a criminal case, you have something solid," why can't that be produced?

It was suggested that I had - - I made up magical

words that was the phrase used in *Blythe*. *Blythe* says what it says. It's not irrelevant. *Blythe* says that someone - - that a custodian has to give seven specific reasons why, one of seven, has to identify that and explain, not in conclusory terms, explain why the documents can't be produced under one of those seven reasons. That didn't happen here.

Faulk, Defendant's rely upon Faulk. You know, if you look at *Faulk*, you know, *Faulk* obviously says more than the Defendants say it does. But one of the things *Faulk* - - *Faulk* notes for it to even come under its ambit is that there must be an actual contemplated enforcement proceeding. And our contention is there simply wasn't. I mean, yes, there were these charges, but it was not an enforcement proceeding. And, Your Honor, I covered this in the bench memo, so I'm not going to read the whole thing to you. But the whole purpose of *Faulk*, you know, *Faulk* relied on *NL- NRLB versus Robbins*. And the whole purpose of *Faulk* is to not prejudice an investigation, to not run afoul of the dis- the normal discovery rules and things of that nature. Well, you know, in this case, these DNR cases were pending for 13 months. You know, discovery was sent. None of this was produced in discovery. It should have been produced in discovery. It was

exculpatory materials. It wasn't produced. But the fact is giving these documents to Mr. Holder would not have simply interfered with an ongoing investigation, an investigation that we claim didn't happen.

You know, in Fiore- the *Fioretti* case makes this point pretty nicely. It says that no activity or investigation was conducted in regard to the complaint. By all reasonable appearances it would seem that no tenable investigation of appellant's alleged misconduct is now taking place or ever took place. In a foot note in that case, the *Fioretti* - - the *Fioretti* Court noted, "Investigations generally can note action or activity. A suspension or cessation of activity raises the question of whether any investigation remains underway." Okay? The Court further went onto to note that, "The legislature clearly did not intend for public agencies to avoid disclosure under the PIA by failing to conclude investigations." And, Your Honor, that's why we spent such time going over the email traffic between Judge Michael, Mr. Greivell, Talley Kovacs, Christine Morral and everybody because, frankly, it doesn't seem like he had any reasonable basis to - - to conduct investigation, to continue to present criminal - - to continue to prosecute criminal charges, and he wasn't

even prosecuting it. He was refusing to even look at documents. He was refusing to look at the chain of title. He was refusing to do anything.

Going - - going back, Your Honor, to count four, I'm sorry, to count one and the production of the documents. Over objection, the Defendants admitted - - were able to admit Exhibit 5. And Exhibit 5, which we hadn't been provided until this trial, is an email from Judge Michael to Peter Rogers referring Mr. Rogers to contact County Attorney Kirk Downey or outside counsel. I think his name is Kevin Karpinski, Mr. Karpinski here. And that email was dated August 12th, 2021. Your Honor, I - - and - - and the suggestion is that as a result of this email, as a result of referring this matter to Mr. Downey, it was - - it was then determined somehow that - - that the document should be released. Your Honor, there - - I don't know how we get there, frankly. I don't know how we get there. There's a complete evidentiary gap in the record between Mr. Rogers being referred to call Mr. Downey or - - or Mr. Karpinski and then the release of the documents. Mr. Downey didn't testify. He's been here the whole time. He didn't testify. He didn't explain why or how the documents came about. The letter transmitting the documents to Mr. Holder

didn't explain it. I asked Mr. Bright why the heck we got the emails now. Mr. Bright didn't know because Mr. Bright wasn't at the County. Mr. Bright wasn't at the County on August 12th. He had left, I believe he said he had left sometime around the 4th of July, I believe his testimony was, of 2021. So he wasn't there. No one has testified as to why the documents were produced. There's simply an evidentiary gap there.

Your Honor, I'm gonna try to make, I think, two -- two points and then wrap up, maybe three points and then wrap up. The suggestion that Mr. Holder should have called Judge Michael and lodged the complaint with him is simply it - - it's not supported by the records. And in fact, if Your Honor looks - - if Your Honor considers all the facts, and those facts being that Mr. Bright, the requests were submitted to the County. The County responded to the requests. The County did not tell Mr. Holder, "Hey, we're not the appropriate custodian. Go somewhere else." No, the County responded to those requests. The fact that Mr. Holder has placed into evidence Exhibits 36 through 39, wherein he eventually went to the County Attorney - - the State's Attorney and they - - for emails, and they said, "We're not - - we're not the right party to

request this. Go see Washington County." When we've got - - I mean that's what 39, 36, 37, 38 and 39 say. So - - so to the extent that there's any suggestion that Mr. Holder went to the wrong party, well that's simply going against what the County did and what Mr. Holder was being told from the State's Attorney himself. And the - - the suggestion that Mr. Holder cannot recover because the State's Attorney's Office told the County to withhold the documents, and the County was - - would rely upon that, well the County needs to rely upon that to its detriment. Okay? If the County's wrong, there has to be - - there has to be a way for Mr. Holder to recover. If the County is right, the County is right. But the County can't, you know, can't deflect and give Mr. Holder absolutely no relief and - - and leave him essentially hanging out to dry. You know, it can't - - it can't hide behind the State's Attorney entity without any impunity. If it made the decision, it - - it - - it - - the County had the emails. The County consulted with the State's Attorney. It has to be - - it has to be able to be held liable as to count one.

Your Honor, you've heard some - - some issues, some - - some issues and arguments about *Brady*, *Brady* materials. I want to point out that the - - there's

an inscription on the walls of the Department of Justice that states the proposition candidly for the federal domain, quote, "The United States wins its point whenever justice is done its citizens in the courts." It's our contention that the County Attorneys also had an obligation to provide Mr. Holder with these documents under, you know, under these *Brady* documents that are the - - the subject of Plaintiff's Exhibit 7. And there's a footnote in the *Brady* case that states that, "The Solicitor General is not a neutral. He's an advocate, but an advocate for a client whose business is not merely to prevail in the instant case." My client's chief business is not to achieve victory but to establish justice. We are constantly reminded of the now classic words penned by one of my illustrious professors, Frederick William Lehmann that, "The government wins it's point when justice is done in its court." And, Your Honor, frankly that's - - that's why Mr. Holder's here. That's why he's gone to such lengths to bring this case to seek justice and to seek the records.

THE COURT: How is this vehicle of this trial and claims related to it the enforcement mechanism for a *Brady* claim? I mean what does *Brady* have to do with this case?

MR. WEDDLE: Well Mr. Holder should have gotten the *Brady* materials as a matter of course. Mr. Holder told the County Attorney that. And, you know, the County Attorney said, "Well it's - - it's not my prerogative to act, you know, for the State's Attorney." But then again, the - - the County is, you know, the County is - - is - - is sort of saying, "It's not our prerogative to act for the State's Attorney," but then they're saying, "Well the State's Attorney is telling us to - - to withhold these documents." So which is it? I mean which - - which hat are they wearing? They have a - - they have a duty to treat Mr. Holder fairly under the law. He should have got these - - these documents under *Brady* and - - and they were withheld from him.

THE COURT: Okay.

MR. WEDDLE: Thank you, Your Honor.

THE COURT: Mr. Karpinski, could you address my inquiry and the response from Mr. Weddle about the attorney's fees and once you get the documents, you know, it's sort of implied that why not just pack it in? Response being well, "Got to this point, expended this amount of money. If nothing else, go forward on attorney's fees as well as other things." But any response to that?

MR. KARPINSKI: Well I - - I do, Your Honor. First of all, it would imply that there was a - - a - - a wrongful or a knowingly improper withhold - - withholding. And I would respectfully submit, Your Honor, if you believe that Section 343, which we put into evidence of the Maryland Public Information Act that says, "In carrying out its statutory function, an agency might have records obtained from investigatory files of another agency. In these circumstances, it is appropriate for the agency to withhold investigatory materials if the agency that provided the information would itself deny access under the investigatory records exemption." So if Your Honor concludes that Mr. Bright acted appropriately in relying upon Deputy State's Attorney Michael, that there were ongoing investigations and that at some point in the process when the State's Attorney's Office gave an indication that it was no longer going to insist that they be withheld and we produced them, then of course there are - - there was no wrongful withholding to begin with. And I would respectfully submit that is, yes, that is when you take your ball and you go home. You don't continue to perpetuate, litigating the case.

As I think was made clear by Mr. Bright from the

very beginning and it's true here today, the County, Washington County, the County Attorney's Office has no dog in this fight. This is a deal where no good deed goes unpunished. These records were - - were on at the server. They relied on the State's Attorney. This whole concept, Your Honor, that now - - I mean this is how far afield we've gotten. We are gonna now take the County Attorney's Office, and I've spent 30 days doing work for counties and municipalities, and I don't know the first thing about criminal law. I couldn't even tell you what *Brady* material is. But how on God's green Earth is the County Attorney's Office supposed to go ahead and figure out what is *Brady* material in investigations and crimes that they don't even were ongoing? I mean that is exactly why - - what Mr. Bright did here was appropriate. So I would respectfully submit, Your Honor, that the answer is, yes, you do - - you pack - - you got your records, that's what you wanted. You go them now because the agency that was objecting to it is saying, "You know, okay, you decide now." And the County makes the decision, "We didn't care to begin with." So it produced the records. So I would respectfully submit that case - - this case should have ended, Your Honor, back in August of 2021, when we produced the records.

And, you know, it's been perpetuated since then. And I'm not gonna go back and forth about the discovery and the motions and all that. The reality is it's a mixed bag. You win some. You lose some. It is what it is. We thought the case should be very narrow. We did not believe that a bunch of depositions were necessary in a case of this nature. We thought it was a straightforward MPIA case that involved whether the County Attorney could rely upon the State's Attorney in issuing a denial with regard to investigative records. So, you know, and to a large extent, the Court agreed with that because the - - the scope of the discovery in this case was limited.

But to - - to answer your question, Your Honor, I believe the County met its burden in this case because it reasonably relied upon the State's Attorney's Office. The MPIA Manual says that's appropriate to do. If the State's Attorney's Office would deny the production of those records, then it's appropriate for the County Attorney to rely upon the State's Attorney in also denying the production of those documents. Stripped to its bare essentials, Your Honor, that's what happened here. And that was not a wrongful denial, and it wasn't a willing or wantful withholding of records.

Unless the Court has any questions, I'll submit.

THE COURT: So you're saying that as far as the Attorney - - or these issues that we've talked about, and I realize it was a whole lot more in this case than that, that the documents that were received were more or less above and beyond what was necessary?

MR. KARPINSKI: Correct. And - - and were done so by the County when it was clear that the County could do it. And it does beg the rhetorical question, Your Honor, why would the County care about any of this? The County cared because the State's Attorney's Office cared. In doing that, the State's Attorney's Office was directing whether the records should be produced. And, you know, it really is that simple. And Judge Michael, quite frankly, from his testimony to this day wouldn't produce the records. But a decision was made by the County to produce them.

THE COURT: Okay, all right. Thank you. Let's - - let's get a date when we can either get back together or - - I'm going to rule from the bench. I suppose if you would, one or both of you would like to avoid the trip here because I do want to do it from this courthouse, we could set up a Zoom connection. So you wouldn't have to come out of your way to come up here just to hear, you know, 20/30 minutes' worth

of my talking.

MR. WEDDLE: Your Honor, it's not an imposition for me, but I realize Your Honor would have to drive so.

THE COURT: Yeah, no, I mean I - - if it's Zoom, it would be Zoom from here.

MR. WEDDLE: Okay.

THE COURT: I'm coming anyway.

MR. KARPINSKI: Yeah, unfortunately, I think Your Honor is required to be actually in the jurisdiction.

THE COURT: Yeah.

MR. KARPINSKI: I'm - - I'm happy to come in person. Or I can, whatever Your Honor wants to do. I don't care.

THE COURT: Okay, well let - - let's set a date - - set a date. And just keep in mind if something comes up, either or both of you are free to say - - as long as we have enough time for the clerks to get things together on a Zoom, we'll just switch to Zoom for you all. So I'll sit here perhaps alone or not quite alone. But let's - - let's see about getting a date here. Be looking probably two - - maybe the week of the 13th of November. I could go a couple days into the next week, which I believe is Thanksgiving week. I got some other stuff in really November that

would make it difficult to do then.

MR. WEDDLE: Your Honor, I…

THE COURT: And I'd like to have enough time to go through the many documents that are here in fairness to both parties. As you all saw, a lot of them came in quickly and we moved on.

MR. WEDDLE: I have a - - I have a conflict with the 13th and 14th but - - of November, but generally available during that time frame otherwise.

MR. KARPINSKI: Your Honor, how - - how does the Court look on the 20th?

THE COURT: We could do it. Any - - any chance for 16, 17? But if not, fine. I mean I don't want to press it.

MR. WEDDLE: Yeah, the Plaintiffs are fine on the 16th and 17th.

THE COURT: Did you say you had a problem with the 15th?

MR. WEDDLE: The 13th and 14th.

THE COURT: Okay. So, Mr. Karpinksi, the 15th, 16th or 17th? If those are too big a hurdle, then let's go to the 20th. It's not the greatest for me, but I can swing it.

MR. WEDDLE: Your - - Your Honor, due to my - - due to Mr. Holder's work schedule, he would prefer it

not to be on the 15th because I believe he works that day. But…

THE COURT: All right.

MR. WEDDLE: …he's available on the 16th or 17th.

THE COURT: And again, Mr. Karpinksi, if it's too big a pinch for those - - one of those two dates, then we'll just slide into the 20th.

MR. KARPINSKI: Your Honor, I have - - in a case, I have a bunch of lawyers that have put holds on like most of November, but Your Honor takes precedent, so I will tell them to take the 17th off the date of available dates for depositions. So we'll do the 17th then.

THE COURT: So November 17th, let's say making that too trip - - too hard a trip up here and just say 10:30 in the morning obviously.

MR. KARPINSKI: 10:30's fine.

THE COURT: 10:30 work?

MR. WEDDLE: Yes.

THE COURT: 10:30 on the 17th. I guess we need to check with AO and see if there's any problem there.

COURT REPORTER: Your Honor, it looks like we will have a courtroom available, but I'll let the Assignment Office you've done that after we conclude today.

THE COURT: Okay. And…

COURT REPORTER: Send a message now?

THE COURT: Why don't you. Because if - - if they say that they've got something in the afternoon, we can do that or if they want us to do something earlier. And if it's just they can't swing it, then we'll look at another date. So you can tell them it's not a - - a demand. It's just a request. While we're checking on that, and let me just compliment counsel on excellent presentations, obviously a ton of work on both sides. I particularly say to the parties that whichever way it goes, like it or not, don't blame it on your attorneys. They deal with what they get on the fact. And so I would thank the folks for being here for the respective parties.

MR. KARPINSKI: Thank you, Your Honor.

MR. WEDDLE: Thank you.

COURT REPORTER: Your Honor, I'm not getting a response.

THE COURT: Okay.

COURT REPORTER: But I think they can make it work for you.

THE COURT: Okay. And it's adjustable if we really need to. And really we only need and giving us a lot of flexibility, like an hour. Okay? Okay so at

least for now we're that date and time.

MR. HOLDER: Thank you, Your Honor. You did an excellent job as well.

THE COURT: Thanks, Mr. Holder. You've obviously put a lot of work into this.

COURT REPORTER: They're saying 1:30. They'd rather it be 1:30.

THE COURT: You guys okay at 1:30?

MR. WEDDLE: 1:30? Yes.

THE COURT: All right, then I'll make sure they lock that in. Thank you.

MR. KARPINSKI: Yes, Your Honor.

MR. WEDDLE: Thank you.

(Whereupon this matter was adjourned at 12:46 p. m.)

OoO

√ Digitally signed by Dee Barnhart

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of **Justin Kyle Holder versus Washington County Board of County Commissioners, et al., Case No. C-21-CV-21-000097,** in the Circuit Court for Washington County, on October 25, 2023, before the Honorable Richard E. Jordan.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 118 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 15th day of December, 2023.

Dee Barnhart
Court Reporter